(7)

No. 05-5992

FILED
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SUPREME COURT, U.S.

In The
Supreme Court of the United States

JACOB ZEDNER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

JOINT APPENDIX

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Petition for Certiorari Filed August 22, 2005
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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Case No. 96-cr-285

UNITED STATES OF AMERICA
v.
JACOB ZEDNER

FILING DATE	DOCKET NUMBER	DESCRIPTION
03/13/1996	1	COMPLAINT as to Jacob Zedner [0:96-m-371] (Garcia, Maria) (Entered: 03/13/1996)
03/13/1996	–	ARREST of Jacob Zedner [0:96-m-371] (Garcia, Maria) (Entered: 03/13/1996)
03/13/1996	–	Before Magistrate Judge Lindsay, Magistrate Arraignment as to Jacob Zedner held on March 13, 1996. AUSA Leonard Lato, CJA Attorney James Hagney, and dft present. Temporary Order of Detention entered. Detention hearing scheduled for March 15, 1996 at 10:30 AM before Magistrate Judge Lindsay. (Defendant informed of rights.) [0:96-m-371] (Garcia, Maria) (Entered: 03/13/1996)
03/13/1996	2	TEMPORARY COMMITMENT issued as to Jacob Zedner (Signed by Magistrate Arlene R. Lindsay, dated 3/13/96 [0:96-m-371] (Garcia, Maria) (Entered 03/13/1996)

FILING DATE	DOCKET NUMBER	DESCRIPTION
03/13/1996	3	CJA 23 FINANCIAL AFFIDAVIT by Jacob Zedner [0:96-m-371] (Garcia, Maria) (Entered 03/13/1996)
03/13/1996	4	CALENDAR ENTRY as to Jacob Zedner; Case called before Magistrate Arlene R. Lindsay on date of 3/13/96 for arraignment Tape # (96-2) 51-950. AUSA L. Lato, James Hagney appointed court attorney for dft. Temporary order of detention entered for dft. Detention hearing scheduled for 3/15/96 at 10:30 AM. [0:96-m-371] (Garcia, Maria) (Entered: 03/13/1996)
03/15/1996	5	CALENDAR ENTRY as to Jacob Zedner; Case called before Magistrate Arlene R. Lindsay on date of 3/15/96 for detention hearing Tape # 96-2 (950-3725). AUSA Leonard Lato present, James Hagney, CJA Atty and dft present. Dft released on $500,000.00 surety bond secured by property located at 72 Hicks Lane, Great Neck, NY, and 130 E. Saint Marks Lane, Valley Stream, NY. See bond for additional conditions of release. [0:96-m-371] (Garcia, Maria) (Entered: 03/21/1996)
03/15/1996	6	Surety BOND entered by Jacob Zedner in Amount $500,000.00 (Signed by Magistrate Arlene R. Lindsay, dated 2/15/96) Bond

FILING DATE	DOCKET NUMBER	DESCRIPTION
03/15/1996	6	secured by properties located at 72 Hicks Lane, Great Neck, and 130 E. Saint Marks Place, Valley Stream. Dft must remain in EDNY & SDNY area. Dft to report to probation dept once a week in person. Dft to surrender passport by 3/19/96. Dft to submit a confession of judgment. [0:96-m-371] (Garcia, Maria) (Entered: 03/21/1996).
03/22/1996	7	Appearance BOND entered by Jacob Zedner in Amount $500,000 (Signed by Magistrate Arlene R. Lindsay, dated 3/15/96) [0:96-m-371] (Costa, Bill) (Entered: 03/25/1996)
04/04/1996	8	INDICTMENT as to Jacob Zedner (1) count(s) 1-7, 8 (fe) (Entered: 04/04/1996)
04/16/1996	9	CALENDAR ENTRY as to Jacob Zedner; Case called before Judge Thomas C. Platt on date of 4/16/96 for Criminal cause for arraignment Court Reporter/ESR Joe Barbella, Dft present with CJA counsel James Hagney, Govt: Leonard Lato, Dft's first appearance, Dft arraigned, sworn, and informed of rights, Not Guilty: Jacob Zedner (1) count(s) 1-7, 8 Bail previously set by the Magistrate Judge to remain, Court stops the speedy trial clock for reasons on the record, Case adj'd to 6/7/96 at 11:00am (Crotty, Mary) Modified on 04/16/1996 (Entered: 04/16/1996)

FILING DATE	DOCKET NUMBER	DESCRIPTION
06/07/1996	11	CALENDAR ENTRY as to Jacob Zedner; Case called before Judge Thomas C. Platt on date of 6/7/96 at 11:00 am for CR cause for motions Court Reporter/ESR Jennifer Maul, Only AUSA Leonard Lato present and he reports no motions have been filed by dft. He further indicates he has contacted dft's attorney but his office indicates he is not there. Set status conference for 9:30 6/21/96 for Jacob Zedner Judge Thomas C. Platt Excludable delay order signed, to be filed. Court places statement on record excluding time. (Donovan, Donna) (Entered: 06/12/1996)
06/07/1996	12	ORDER of Excludable Delay as to Jacob Zedner from 6/7/96 to 6/21/96 (Signed by Judge Thomas C. Platt dated: 6/7/96) (Donovan, Donna) (Entered: 06/12/1996)
06/21/1996	13	CALENDAR ENTRY as to Jacob Zedner; Case called before Judge Thomas C. Platt on date of 6/21/96 at 9:30 am for CR cause for status conference Court Reporter/ESR Pam Maddock Case called. Only AUSA Leonard Lato present court orders issuance of a bench warrant but stays execution of bench warrant until 6/26/96 at 9:30 am at which time dft and his counsel should appear. (Donovan, Donna) (Entered: 06/26/1996)

FILING DATE	DOCKET NUMBER	DESCRIPTION
06/24/1996	14	LETTER dated 6/24/96 from Leonard Lato to James F. Hagney RE: Informing you that a status conference will be held at 9:30 am. Because the dft did not appear at the conference of 6/7/96 and 6/21/96, Judge Platt has ordered that a warrant issue for the dft's arrest. The order is stayed until 6/26/96. (Donovan, Donna) (Entered: 06/26/1996)
06/26/1996	15	CALENDAR ENTRY as to Jacob Zedner; Case called before Judge Thomas C. Platt on date of 6/26/96 at 9:30 am for CR cause for status conference Court Reporter/ER Joe Barbella, AUSA Leonard Lato and dft present. No appearance by dft's atty. Mr. Hagney. Courtroom deputy clerk informs court that Mr. Hagney is before a state court Judge and will not be able to get here before 2:00 pm. Circumstances of counsel's prior failure to appear placed on record by Govt. and Court. Case called at 2:00 pm Dft Zedner present with CJA counsel James Hagney. Mr. Hagney apologizes to court and also indicates on record he never received notice of prior appearances. Court warns counsel that this behavior will not be tolerated again. Both sides agree

FILING DATE	DOCKET NUMBER	DESCRIPTION
		case is complex. Order excludable delay based on complexity of case signed, to be filed. Govt. indicates time is needed by defense counsel to review documents in Washington. Any outstanding discovery except for Washington documents, set discovery due for 7/1/96 for Jacob Zedner, Bench warrant vacated. Set status conference for 9:30 9/6/96 for Jacob Zedner before Judge Thomas C. Platt (Donovan, Donna) (Entered: 06/27/1996)
06/26/1996	16	ORDER of Excludable Delay as to Jacob Zedner from 6/21/96 through 9/6/96 (Signed by Judge Thomas C. Platt dated: 6/26/96) (Donovan, Donna) (Entered: 06/27/1996)
09/06/1996	19	CALENDAR ENTRY as to Jacob Zedner; Case called before Judge Thomas C. Platt on date of 09/06/96 at 9:30 am for CR cause for Status Conference Court Reporter/ESR Joe Barbella, Dft present with CJA counsel James Hagney. Govt: Leonard Lato. Status conference held. set status conference for 9:30 11/8/96 for Jacob Zedner before Judge Thomas C. Platt Order of excludable delay and waiver of speedy trial signed, to be filed. (Donovan, Donna) (Entered: 09/18/1996)

FILING DATE	DOCKET NUMBER	DESCRIPTION
09/06/1996	20	WAIVER OF SPEEDY TRIAL AND ORDER OF EXCLUDABLE DELAY as to Jacob Zedner (Signed by Judge Thomas C. Platt dated: 9/6/96) (Donovan, Donna) (Entered: 9/18/1996)
11/08/1996	21	CALENDAR ENTRY as to Jacob Zedner; Case called before Judge Thomas C. Platt on date of 11/8/96 at 9:30 am for CR cause for status conference Court Reporter/ESR Owen Wicker, Dft and counsel for both sides present. Waiver of speedy trial for all time signed, to be filed. Order of excludable delay also signed, to be filed. Reset status conference for 9:30 1/31/97 for Jacob Zedner before Judge Thomas C. Platt for reasons stated on record. (Donovan, Donna) (Entered: 11/08/1996)
11/08/1996	22	WAIVER of Speedy Trial by Jacob Zedner (signed by Laura Giangarra, 11/8/96) (Donovan, Donna) (Entered: 11/08/1996)
11/08/1996	23	ORDER OF EXCLUDABLE DELAY as to Jacob Zedner (Signed by Judge Thomas C. Platt dated: 11/8/96) (Donovan, Donna) (Entered: 11/08/1996)
01/31/1997	25	CALENDAR ENTRY as to Jacob Zedner; Case called before Judge Thomas C. Platt on date of 1/31/97 at

FILING DATE	DOCKET NUMBER	DESCRIPTION
		9:30 am for cause for status conference Court Reporter/ESR Owen Wicker, Dft present with CJA counsel James Hagney. Govt: Leonard Lato. Govt. reports case ready for trial. Dft not ready. Set jury selection for 9:30 5/5/97 for Jacob Zedner before Judge Thomas C. Platt, set Jury trial for 9:30 5/5/97 for Jacob Zedner before Judge Thomas C. Platt (Donovan, Donna) (Entered: 02/10/1997)
05/02/1997	26	CALENDAR ENTRY as to Jacob Zedner; Case called before Judge Thomas C. Platt on date of 5/2/97 @ 9:30am for Criminal Cause for Conference Court Reporter/ESR Ron Tolkin, deft present with CJA counsel James Hagney and Tracey Gaffey (LAS). Govt: Leonard Lato. Deft's motion to be relieved as counsel argued DENIED at this time for the reasons stated on the record. Court directs Tracey Gaffey from (LAS) to confer with deft. in an advisory capacity. The Court orders the Govt to make arrangements to have the deft. examined by Dr. Goldstein (psychiatrist). If the examination proves deft is able to proceed to trial, the deft. will try his case pro se with LAS in an advisory capacity. Deft. indicates he is willing to be examined by Dr. Goldstein. The

FILING DATE	DOCKET NUMBER	DESCRIPTION
		Court indicates it will so order all subpoenas including a representative from the Treasury Department. Jury selection and trial previously set for 5/5/97 adjourned without date pending report of Dr. Goldstein on deft. Set status conference for 9:30 5/16/97 for Jacob Zedner before Judge Thomas C. Platt Court informs Mr. Hagney that he need not be present at that time. (fe) (Entered: 05/06/1997)
05/16/1997	27	ORDER as to Jacob Zedner, that a hearing shall be held on the present mental competency of the dft. (see order for further details) (Signed by Judge Thomas C. Platt dated: 5/16/97) (Donovan, Donna) (Entered: 05/20/1997)
05/16/1997	28	CALENDAR ENTRY as to Jacob Zedner; Case called before Judge Thomas C. Platt on date of 5/16/97 at 9:30 am for cause for conference on update on report of Dr. Goldstein. Court Reporter/ESR Harry Rapaport Dft and counsel for both sides present. Order signed in court RE: Dft's examination by psychiatrist Dr. Goldstein. Order handed to Govt. to make correction. Govt. will correct and resubmit. Dft to complete financial affidavit. as soon as this is accomplished the court will appoint

FILING DATE	DOCKET NUMBER	DESCRIPTION
		(L.A.S.) by Tracey Gaffey for all purposes. Case adjourned without date, to be rescheduled once doctor's report is furnished. (Donovan, Donna) (Entered: 05/20/1997)
08/07/1997	29	LETTER dated 8/5/97 from Naomi Goldstein to Judge Platt Re: Pursuant to your order, I have evaluated Jacob Zedner as to his history and present symptoms and my opinion as to his diagnosis, if any, prognosis and his competency to stand trial. (Donovan, Donna) (Entered: 09/17/1997)
09/08/1997	30	CALENDAR ENTRY as to Jacob Zedner; Case called before Judge Thomas C. Platt on date of 9/8/97 at 9:30 am for CR cause for conference Court Reporter/ESR Harry Rapaport Dft present with Legal Aid Counsel Randi Chavis. Govt: Leonard Lato. Dft, himself, addresses the court. The court warns dft that anything he says can be used against him and advises him not to speak. Dft wishes to speak, anyway. Dft indicates there is a problem with his Legal Aid Attorney. The court informs dft that no further attorneys will be appointed by this court. Dft wishes to proceed prose but asks the court to ask his

FILING DATE	DOCKET NUMBER	DESCRIPTION
		attorney to assist him. The court GRANTS dft's request. Ms. Chavis, or someone from her office will assist dft in preparation for the trial and to prepare the subpoenas. Dft indicates he will be preparing subpoenas for the President of the US, Attorney General etc. Case adjourned to 10/20/97 at 9:30 am for return of the subpoenas. If no motions to quash are submitted the court will select a jury. (Donovan, Donna) (Entered: 09/17/1997)
09/22/1997	32	ORDER as to Jacob Zedner The Court has "So Ordered" and signed the nine subpoenas addressed to private persons but declines to "So Order" or sign the remaining subpoenas addressed to government officials or agencies without affording the U.S. Attorney an opportunity to be heard with respect to the same Objections, if any, to be received on or before Thursday 9/25/97 by 4pm. The Court will proceed with the issuance of these additional subpoenas if objections are not received. (Signed by Judge Thomas C. Platt, dated: 9/22/97) c/m (fe) (Entered: 10/01/1997)
09/25/1997	31	LETTER dated 9/24/97 from Leonard Lato (AUSA) to Judge Platt RE: in response to the Court's Memorandum

FILING DATE	DOCKET NUMBER	DESCRIPTION
		and Order dated 9/22/97, the US Attorney submits this letter to object to the deft's request that the subponeas be "So Ordered." (fe) (Entered: 09/30/1997)
09/27/1997	35	Subpoena issued to Mrs. Anna Chenault a/k/a Chen, Hsiang, May Washington D.C., Mr. Lance S. Adler J.D. Esq., Mr. John Fegon, Assistant Manager of Marine Midland Bank, Mr. Jim Palsh, Treasurer of Merrill Lynch; Miss Ann Allen, VP of Merrill Lynch; Mr. James Young, Manager of Marine Midland Bank; Weston Keith Frank; Mr. Stan Jutkowitz and Don Clark, Esq.; John Reed, The Chairman of Citicorp and City Bank International by Jacob Zedner as to Jacob Zedner to appear on 10/20/97 at 9:30 am at the US District Court. So Ordered by Judge Platt (Donovan, Donna) (Entered: 10/15/1997)
09/29/1997	33	LETTER dated 9/29/97 from Leonard Lato to Judge Platt RE: the U.S. Attorney opposes the deft's request for issuance of the additional subpoenas. (fe) (Entered: 10/01/1997)
09/29/1997	34	ORDER as to Jacob Zedner the Court declines to "So Order" or sign the 13 subpoenas submitted by deft (Signed by Judge Thomas C. Platt, dated: 9/29/97) c/m (fe) (Entered: 10/01/1997)

FILING DATE	DOCKET NUMBER	DESCRIPTION
10/07/1997	36	Dft Request issuing of subpoena by Jacob Zedner (Donovan, Donna) (Entered: 10/23/1997)
10/08/1997	37	Return of Service of the subpoena served on Mr. James Young, Manager of Marine Midland Bank on 9/29/97. (Donovan, Donna) (Entered: 10/23/1997)
10/08/1997	38	Return of Service of Subpoena on Miss Ann Allen by Jacob Zedner on 9/29/97. (Donovan, Donna) (Entered: 10/23/1997)
10/08/1997	39	Return of Service of Subpoena on Mr. John Fegon by Jacob Zedner on 9/29/97. (Donovan, Donna) (Entered: 10/23/1997)
10/08/1997	40	Return of Service of Subpoena on Mr. Jim Palsh by Jacob Zedner on 10/1/97. (Donovan, Donna) (Entered: 10/23/1997)
10/08/1997	41	Return of Service of Subpoena on Mr. Lance S. Adler J.D. by Jacob Zedner on 10/7/97 (Donovan, Donna) Modified on 10/23/1997 (Entered: 10/23/1997)
10/08/1997	53	LETTER dated 10/8/97 from Petra T. Tasheff to Judge Platt RE: Responding to the Subpoena directed to "John S. Reed The Chairman of Citicorp and City Bank International" to appear before this court with any documents

FILING DATE	DOCKET NUMBER	DESCRIPTION
		within the scope of the subpoena. (Donovan, Donna) (Entered: 11/06/1997)
10/14/1997	42	MOTION as to Jacob Zedner to quash subpeona to Lance S. Adler; Motion Hearing/Return date of 9:30 10/20/97 for Jacob Zedner motion (Donovan, Donna) (Entered: 10/23/1997)
10/15/1997	54	LETTER dated 10/15/97 from Jacob Zedner to Judge Platt RE: Request permission to file a response to Citibank's letter dated 10/8/97. (Donovan, Donna) (Entered: 11/06/1997)
10/15/1997	55	LETTER dated 10/15/97 from Jacob Zedner to Judge Platt Re: Advising the court that my court appointed attorney, Randi Chavis, refuses to help me with my paper work. (Donovan, Donna) (Entered: 11/06/1997)
10/15/1997	60	LETTER dated 10/13/97 from Jacob Zedner to Judge Platt Re: Responding to letter dated 10/8/97 of the Citibank Corp. (Donovan, Donna) (Entered: 11/06/1997)
10/16/1997	56	LETTER dated 10/14/97 from Bruce Lilling to Judge Platt Re: Requesting that the subpoena on Weston Keith Frank be quash, since no witness fee or travel

FILING DATE	DOCKET NUMBER	DESCRIPTION
		expenses were given to Mr. Frank at the receipt of the subpoena. (Donovan, Donna) (Entered: 11/06/1997)
10/16/1997	–	ORDER as to letter dated 10/16/97 regarding subpoena on Weston Keith Frank, If no witness fees were in fact paid subpoena does not have to be bound. (Signed by Judge Thomas C. Platt dated: 10/16/97) (Donovan, Donna) (Entered: 11/06/1997)
10/17/1997	43	MOTION as to Jacob Zedner for Pamela K. Riley to appear pro hac vice for purposes of the motion to quash the subpoena that was served on Stanley S. Jutkowitz (Donovan, Donna) (Entered: 10/23/1997)
10/17/1997	44	MOTION as to Jacob Zedner to quash the subpoena served on Stanley S. Jutkowitz; Motion Hearing/Return date of 9:30 10/20/97 for Jacob Zedner motion (Donovan, Donna) (Entered: 10/23/1997)
10/17/1997	45	MEMORANDUM as to Jacob Zedner in support of [44-1] motion to quash the subpoena served on Stanley S. Jutkowitz (Donovan, Donna) (Entered: 10/23/1997)

FILING DATE	DOCKET NUMBER	DESCRIPTION
10/17/1997	57	MOTION as to Weston Keith Frank to quash the subpoena (Donovan, Donna) (Entered: 11/06/1997)
10/20/1997	46	CALENDAR ENTRY as to Jacob Zedner; Case called before Judge Thomas C. Platt on date of 10/20/97 at 9:30 am for CR cause for motion to quash subpoena Court Reporter/ESR Harry Rapaport Dft present appearing pro se and being assisted by Randi Chavis of Legal Aid. Govt: Leonard Lato. Case referred to Mag. Judge Boyle re: motions to quash subpoenas. (Donovan, Donna) (Entered: 10/23/1997) FILING
10/20/1997	47	MOTION by Jacob Zedner to dismiss all charges (Donovan, Donna) (Entered: 10/23/1997)
10/20/1997	48	MOTION by Jacob Zedner for an investigation of act of treason/conspiracy. (Donovan, Donna) (Entered: 10/23/1997)
10/20/1997	49	MOTION by Jacob Zedner for the court to order the investigation of violations of my civil rights (Donovan, Donna) (Entered: 10/23/1997)
10/20/1997	50	CALENDAR ENTRY as to Jacob Zedner; Case called before Magistrate E. T. Boyle on date of 10/20/97 @ 11:40am for CR Cause

FILING DATE	DOCKET NUMBER	DESCRIPTION
		For Motions To Quash Subpoenas; Court Reporter/ESR Harry Rapaport; Govt: Leonard Lato; Deft present with counsel Randi Chavis; Exhibit #1A, 1B admitted as Court Exhibits. Signature of Mr. Zedner marked as Exhibit C. Exhibits 1A, 1B and 1C to be filed under seal. (fe) (Entered: 10/24/1997)
10/20/1997	59	Copy of the Counsel on Foreign Relations submitted by Citibank at the hearing before Mag. Judge Orenstein to quash subpoena. (Donovan, Donna) (Entered: 11/06/1997)
10/24/1997	51	REPORT AND RECOMMENDATIONS of Magistrate E. T. Boyle as to Jacob Zedner Re: [44-1] motion to quash the subpoena served on Stanley S. Jutkowitz, [42-1] motion to quash subpeona to Lance S. Adler; Recommends that the motions be denied; Motion no longer referred Objections to R and R due by 11/3/97 (Donovan, Donna) (Entered: 10/31/1997)
10/24/1997	52	ORDER as to Jacob Zedner denying [49-1] motion for the court to order the investigation of violations of my civil rights as to Jacob Zedner (1), denying [48-1] motion for an investigation of act of treason/ conspiracy. as to Jacob Zedner

FILING DATE	DOCKET NUMBER	DESCRIPTION
		(1), denying [47-1] motion to dismiss all charges as to Jacob Zedner (1) (Signed by Judge Thomas C. Platt, dated: 10/24/97) c/m (Donovan, Donna) (Entered: 10/31/1997)
10/24/1997	58	Return of Service of the Subpoena on John Reed "The Chairman of Citicorp and City Bank International" by Jacob Zedner (Donovan, Donna) (Entered: 11/06/1997)
11/03/1997	62	Objection of Lance Adler to the Report and Recommendation of Mag. Judge Boyle dated 10/24/97. (Donovan, Donna) (Entered: 11/24/1997)
11/04/1997	63	Objections to Report and Recommendation of Mag. Judge Boyle dated 10/24/97. (Donovan, Donna) (Entered: 11/24/1997)
11/06/1997	61	AFFIDAVIT by Pamela K. Riley on behalf of Stanley S. Jutkowitz Re: In support of motion to Quash the subpoena. (Donovan, Donna) (Entered: 11/06/1997)
11/10/1997	64	Return of service of Subpoena on Mr. Stan Jutkowitz and Don Clark by Jacob Zedner (Donovan, Donna) (Entered: 11/24/1997)
11/17/1997	65	ORDER as to Jacob Zedner Affirming the report and recommendation by Mag. Judge Orenstien and adopted denying [44-1] motion to

FILING DATE	DOCKET NUMBER	DESCRIPTION
		quash the subpoena served on Stanley S. Jutkowitz as to Jacob Zedner (1), denying [57-1] motion to quash the subpoena as to Zedner (1), denying [42-1] motion to quash subpeona to S. Adler as to Jacob Zedner (1) (Signed by Judge Thomas C. Platt, dated: 11/17/97) (Donovan, Donna) (Entered: 12/05/1997)
11/19/1997	66	AMENDED ORDER as to Jacob Zedner Amending order dated 11/17/97 (Signed by Judge Thomas C. Platt dated: 11/19/97) (Donovan, Donna) (Entered: 12/05/1997)
12/05/1997	67	Return of service of the Subpoena served on Weston Keith Frank by Jacob Zedner (Donovan, Donna) (Entered: 12/05/1997)
12/16/1997	69	CALENDAR ENTRY as to Jacob Zedner; Case called before Judge Thomas C. Platt on date of 12/16/97 at 9:30 am for CR cause for conference Court Reporter/ ESR Harry Rapaport Only AUSA Leonard Lato present and reports he was on trial and has not spoken to Randi Chavis. Case adjourned to 12/17/97 at 9:30 am, if not then 12/19/97 at 9:30 am. (Donovan, Donna) (Entered: 12/23/1997)

FILING DATE	DOCKET NUMBER	DESCRIPTION
12/17/1997	68	CALENDAR ENTRY as to Jacob Zedner; Case called before Judge Thomas C. Platt on date of 12/17/97 at 9:30 am for CR cause for conference Court Reporter/ ESR Harry Rapaport, DFt present with Legal Aid counsel Tracey Gaffey. set jury selection for 9:30 2/17/98 for Jacob Zedner before Judge Thomas C. Platt, set Jury trial for 9:30 2/17/98 for Jacob Zedner before Judge Thomas C. Platt (Donovan, Donna) (Entered: 12/22/1997)
01/30/1998	70	CALENDAR ENTRY as to Jacob Zedner; Case called before Judge Thomas C. Platt on date of 1/30/98 at 9:30 am for CR cause for conference Court Reporter/ ESR Joe Barbella Deft present pro se with Legal Aid Counsel Tracey Gaffey. Govt: Leonard Lato. Court So Orders Deft's subpoenas. Jury selection and trial scheduled for 2/17/98 is adjourned. Status conference set for 4/17/98 at 9:30 am. (Donovan, Donna) (Entered: 02/03/1998)
01/30/1998	71	LETTER dated 1/30/98 from Jeanette Redmond to Jacob Zedner Re: Enclosing two subpoenas which were "So Ordered" by Judge Platt. (Donovan, Donna) (Entered: 02/06/1998)

FILING DATE	DOCKET NUMBER	DESCRIPTION
01/30/1998	72	"So Ordered" Subpoenas to Head Office City Bank International New York by Jacob Zedner as to Jacob Zedner (Donovan, Donna) (Entered 02/06/1998)
01/30/1998	73	"So Ordered" Subpeonas to The Federal Reserve Bank of the United States of America by Jacob Zedner as to Jacob Zedner (Donovan, Donna) (Entered: 02/06/1998)
02/12/1998	75	LETTER dated 2/12/98 from AUSA Leonard Lato to USDJ Platt RE: in support of motion to quash defendant's subpoena to (1) The Treasury Departments of the USA Washington, D.C. and (2) The Treasury Department of Treasury International Corporation. (Branciforte, Ralph) (Entered: 03/23/1998)
02/20/1998	74	MOTION by USA as to Jacob Zedner to quash deft's subpoena to the Federal Reserve Bank of the USA, Washington D.C. (fe) (Entered: 03/02/1998)
02/20/1998	–	ENDORSED ORDER as to Jacob Zedner granting [74-1] motion to quash deft's subpoena as to the Federal Reserve Bank of the USA, Washington D.C. as to Jacob Zedner (1) (Judge Thomas C. Platt, dated 2/20/98) Order entered on document # 74 c/m (fe) (Entered: 03/02/1998)

FILING DATE	DOCKET NUMBER	DESCRIPTION
02/23/1998	76	LETTER dated 2/18/98 from Jacob Zedner to USDJ Platt RE: The Board of Governors of the Federal Reserve System submitted papers neglecting to reference any of the Federal Reserve Numbers which were assigned to John Davidson aka Jacob Zedner for Jazoroff Holding Group Ltd. under Criminal and Political responsibility for the Asset of the Plum Trust aka MEI HUA Trust (Humanitarian Trust) worlwide [sic]. I Respectfully request that a hearing date regarding this Nation Security matter be scheduled as soon as possible. (Branciforte, Ralph) (Entered: 03/24/1998)
02/23/1998	–	ENDORSED ORDER as to Jacob Zedner. Request for a Hearing Date is denied. Motion to quash its subpoena served on the Secretary of The Board of Governors of the Federal Reserve System is granted on the grounds set forth in the letter motion of the Board to this Court received on 2/18/98. (Judge Thomas C. Platt, dated 3/20/98) entered on doc# 76 (Branciforte, Ralph) (Entered: 03/24/1998)

FILING DATE	DOCKET NUMBER	DESCRIPTION
03/02/1998	–	SEALED DOCUMENT as to Jacob Zedner (Ltr of Jacob Zedner dated 2/23/98 and attached original "so ordered" subpoena signed by Judge Platt on 2/25/98 addressed to the Dept of the Comptroller of the Currency, Treasury Dept., Washington, D.C.) (Mahon, Cinthia) (Entered: 03/04/1998)
04/15/1998	77	LETTER dated 4/15/98 from Tracey Gaffey to USDJ Platt RE: Requesting that Mr. Zedner's appearance at the 4/17/98 conference be waived for Passover observance. (Branciforte, Ralph) (Entered: 04/21/1998)
04/17/1998	78	MOTION by The Office of the Comptroller of the Currency as to Jacob Zedner to quash defendant's subpoena to "Department of the Comptroller of the Currency of the Treasury Department of the United States of America Washington, D.C. The subpoena requests a personal appearance and various documents which appear to relate to customer accounts at various financial institutions in the United States and other foreign Countries. (Branciforte, Ralph) (Entered: 04/21/1998)

FILING DATE	DOCKET NUMBER	DESCRIPTION
04/17/1998	–	ENDORSED ORDER as to Jacob Zedner granting [78-1] motion to quash defendant's subpoena to "Department of the Comptroller of the Currency of the Treasury Department of the United States of America Washington, D.C. as to Jacob Zedner (1) (Judge Thomas C. Platt, dated 4/17/98) EOD # 78 CM (Branciforte, Ralph) (Entered: 04/21/1998)
04/17/1998	79	CALENDAR ENTRY as to Jacob Zedner; Case called before Judge Thomas C. Platt on date of 4/17/98 @ 9:30 AM for Criminal Cause For Conference. Defendant not present due to Religious Holiday. LAS Counsel Tracey Gaffey present. Govt: AUSA Leonard Lato. Court Reporter/ESR Ron Tolkin. Defendant's subpoenas are quashed by the Court. A trial date will be scheduled once the Court finishes its current trial. (Branciforte, Ralph) (Entered: 04/22/1998)
04/27/1998	80	PROCESS RECEIPT AND RETURN from the USMS as to Jacob Zedner RE: Subpoena served on the Department of the Comptroller of Currency, Treasury Department. (Branciforte, Ralph) (Entered: 04/28/1998)

FILING DATE	DOCKET NUMBER	DESCRIPTION
07/08/1998	83	LETTER dated 7/8/98 from Jacob Zedner to USDJ Platt RE: Requesting for the second time that all documents from my file from the past and future be sealed. (Branciforte, Ralph) (Entered: 07/10/1998)
07/14/1998	–	SEALED DOCUMENT as to Jacob Zedner RE: Order to Show Cause submitted by Jacob Zedner and signed by USDJ Platt dtd. 7/14/98. (Branciforte, Ralph) (Entered: 07/16/1998)
07/27/1998	84	LETTER dated 7/27/98 from Jacob Zedner to USDJ Platt RE: Asking the Court not to Quash the Subpoenas issued for Citibank. (Branciforte, Ralph) (Entered: 07/27/1998)
07/27/1998	85	RETURN RECEIPT CARD as to Petra Pasheff from Jacob Zedner RE: Letter dtd. 7/22/98 – Compliance with subpoena. (P 148 876 285) (Branciforte, Ralph) (Entered: 07/28/1998)
07/27/1998	86	Letter MOTION by Citibank as to Jacob Zedner to quash any outstanding subpoenas and orders requiring Citibank, N.A. or any of its affiliates to produce documents, or requiring any Citibank employee to appear before the Court (Branciforte, Ralph) (Entered: 07/28/1998)

FILING DATE	DOCKET NUMBER	DESCRIPTION
07/28/1998	–	ENDORSED ORDER as to Jacob Zedner granting [86-1] motion to quash any outstanding subpoenas and orders requiring Citibank, N.A. or any of its affiliates to produce documents, or requiring any Citibank employee to appear before the Court as to Jacob Zedner (1) (Judge Thomas C. Platt, dated 7/28/98) CM (Branciforte, Ralph) (Entered: 07/28/1998)
09/01/1998	87	Letter MOTION by Citibank as to Jacob Zedner to quash the subpoena dtd. 8/14/98 directed to "HEAD OFFICE, CITIBANK INTERNATIONAL NEW YORK, CITIBANK SINGAPORE BRANCH, CITIBANK TAIPEI BRANCH (R.O.C.) A.K.A. THE HUAQIBANK OF SINGAPORE A.K.A (CITIBABNK [sic] SINGAPORE BRANCH) International Banking Corporation/First National Bank of New York/First National City Bank" (Branciforte, Ralph) (Entered: 09/02/1998)
09/01/1998	88	LETTER dated 9/1/98 from Petra Tasheff to USDJ Platt RE: With respect to the Motion quash (doc# 87), there is no Citibank entity that goes by the name to which the subpoena is directed. (Branciforte, Ralph) (Entered: 09/02/1998)

FILING DATE	DOCKET NUMBER	DESCRIPTION
09/01/1998	–	ENDORSED ORDER as to Jacob Zedner granting Citibank's [87-1] motion to quash the subpoena dtd. 8/14/98 directed to "HEAD CITIBANK INTERNATIONAL NEW YORK, CITIBANK SINGAPORE BRANCH, CITIBANK TAIPEI BRANCH (R.O.C.) A.K.A. THE HUAQIBANK OF SINGAPORE A.K.A (CITIBABNK [sic] SINGAPORE BRANCH) International Banking Corporation/First National Bank of New York/First National City Bank" as to Jacob Zedner (1) (Judge Thomas Platt, dated 9/1/98) EOD# 88 (Branciforte, Ralph) (Entered: 09/02/1998)
09/02/1998	89	LETTER dated 9/1/98 from Jacob Zedner to USDJ Platt RE: Requesting the court not to squash [sic] the impending subpoena based on the false accusations of Citibank's legal representative. (Branciforte, Ralph) (Entered: 09/04/1998)
09/08/1998	90	Letter MOTION by Citibank as to Jacob Zedner to quash the subpoena dtd. 8/14/98 directed to "HEAD OFFICE, CITIBANK INTERNATIONAL NEW YORK, CITIBANK SINGAPORE BRANCH, CITIBANK TAIPEI BRANCH (R.O.C.) A.k.a. THE HUAQIBANK OF SINGAPORE a.k.a. (CITIBANK SINGAPORE BRANCH) International

FILING DATE	DOCKET NUMBER	DESCRIPTION
		Banking Corporation/First National Bank of New York/First National City Bank" (original of doc# 87) (Branciforte, Ralph) (Entered: 09/09/1998)
09/08/1998	–	ENDORSED ORDER as to Jacob Zedner granting Citibank's [90-1] motion to quash the subpoena dtd. 8/14/98 directed to "HEAD CITIBANK INTERNATIONAL NEW YORK, CITIBANK SINGAPORE BRANCH, CITIBANK TAIPEI BRANCH (R.O.C.) A.k.a. THE HUAQIBANK OF SINGAPORE a.k.a. (CITIBANK SINGAPORE BRANCH) International Banking Corporation/First National Bank of New York/First National City Bank" as to Jacob Zedner (1) (Judge Thomas Platt, dated 9/8/98) EDO# 90 (Branciforte, Ralph) (Entered: 09/09/1998)
09/10/1998	91	Letter MOTION dtd. 9/1/98 by Citibank as to Jacob Zedner to quash the subpoena from Jacob Zedner dtd. 8/14/98 (Branciforte, Ralph) (Entered: 09/14/1998)
09/10/1998	–	ENDORSED ORDER as to Jacob Zedner granting Citibank's [91-1] motion to quash the subpoena from Jacob Zedner dtd. 8/14/98 as to Jacob Zedner (1) (Judge Thomas C. Platt, dated 9/10/98) EOD# 91 CM (Branciforte, Ralph) (Entered: 09/14/1998)

FILING DATE	DOCKET NUMBER	DESCRIPTION
09/17/1998	92	CALENDAR ENTRY as to Jacob Zedner; Case called before Judge Thomas C. Platt on date of 9/17/98 @ 10:00 AM for Criminal Cause For Conference. Defendant Pro Se present – Legal Advisor LAS Counsel Tracey Gaffey present. Govt: AUSA Leonard Lato. Court Reporter/ESR Joe Barbella, setting jury selection for 9:30 10/14/98 for Jacob Zedner before Judge Thomas C. Platt Defendant's application to reduce the bond of $500,000.00 to $20,000.00 and oral motion to refinance his wife's house referred to Magistrate Judge who set bail originally. Defendant wishes to subpoena Citibank and Treasury Department. Subpoenas to be prepared made returnable on 9/24/98 @ 9:30 AM. Govt's motion to quash these subpoenas Denied. Court indicates someone from the bank will have to come in and testify. (Branciforte, Ralph) (Entered: 09/17/1998)
09/18/1998	93	NOTICE of Issuance of Subpoena by Jacob Zedner as to Madeline Albright, US Secretary of State; Robert Rubin, US Secretary of Treasury; US Senator Alfonse D'Amato; Mary Ellen Withdrow, Treasuser [sic] of the Treasury of

FILING DATE	DOCKET NUMBER	DESCRIPTION
		the United States of America and Treasury International Corporation; and Patrick Mass, Vice President and Resident Manager of Prudential Securities Incorporated & Ralph Raymond, Associate Vice President of Prudential Securities Incorporated in Garden City, NY. (Branciforte, Ralph) (Entered: 09/18/1998)
09/18/1998	94	LETTER dated 9/18/98 from Jacob Zedner to USDJ Platt RE: Requesting a Chinese Interpreter for the 9/24/98 conference before the Court. (Branciforte, Ralph) (Entered: 09/22/1998)
09/21/1998	95	LETTER dated 9/21/98 from Petra Tasheff to USDJ Platt RE: Requesting the Court quash the subpoena issued against John S. Reed and the subpoena dtd. 9/14/98 directed to "HEAD OFFICE, CITIBANK INTERNATIONAL, NEW YORK, CITIBANK SINGAPORE BRANCH, a.k.a. THE HUAQIBANK OF SINGAPORE BRANCH." (Branciforte, Ralph) (Entered: 09/25/1998)
09/22/1998	96	LETTER dated 9/22/98 from Petra Tasheff to USDJ Platt RE: I understand that Mr. Reed will not be required to appear at a hearing scheduled for this Thursday,

FILING DATE	DOCKET NUMBER	DESCRIPTION
		9/24/98. The appropriate representative to appear at a hearing regarding the recent subpoenas issued at Mr. Zedner's request is John Redding. However Mr. Redding is on vacation and will not be available until 10/5/98. (Branciforte, Ralph) (Entered: 09/25/1998)
09/24/1998	97	CALENDAR ENTRY as to Jacob Zedner; Case called before Judge Thomas C. Platt on date of 9/24/98 @ 9:30 AM for Criminal Cause For Hearing. Hearing withdrawn. Witness from Citibank on vacation hearing adjourned to 10/8/98 @ 9:30 AM (Branciforte, Ralph) (Entered: 09/29/1998)
09/24/1998	–	Status conference/Hearing as to Jacob Zedner set at 9:30 10/8/98 for Jacob Zedner before Judge Thomas C. Platt (Branciforte, Ralph) (Entered: 09/29/1998)
10/01/1998	98	CALENDAR ENTRY as to Jacob Zedner; Case called before Judge Thomas C. Platt on date of 10/1/98 @ 9:30 AM for Criminal Cause For Conference. Defendant not present. LAS Counsel for Defendant, Randi Chavis present. Govt: AUSA Leonard Lato. Court Reporter/ ESR Ron Tolkin. Conference held. setting status conference for

FILING DATE	DOCKET NUMBER	DESCRIPTION
		10/8/98 for Jacob Zedner before Judge Thomas C. Platt regarding the documents from the Treasury Department and Citibank and the subpoenas. (Branciforte, Ralph) (Entered: 10/01/1998)
10/02/1998	99	CONFERENCE TRANSCRIPT filed in case as to Jacob Zedner for dates of 10/1/98 @ 10:00 AM; Court Reporter/ESR: Ronald Tolkin (Branciforte, Ralph) (Entered: 10/06/1998)
10/04/1998	101	CALENDAR ENTRY as to Jacob Zedner; Case called before Judge Thomas C. Platt on date of 10/14/98 @ 9:30 AM for Criminal Cause For Jury Selection and Trial. Defendant Zedner appearing Pro Se with LAS Legal Advisor Tracey Gaffey. Govt: AUSA Leonard Lato. Court Reporter/ ESR Harry Rapaport. Hearing Held in chambers with AUSA Lato and LAS Gaffey. Court places its concerns on the record. Portion of hearing without Govt. present ordered sealed by the Court. Competency hearing held. Court orders defendant to be examined more extensively by a Govt. doctor pursuant to 28 USC 4241(d). Court's findings placed on the record. Court grants defendants

FILING DATE	DOCKET NUMBER	DESCRIPTION
		right to appeal this ruling and LAS Gaffey indicates that her office will represent The defendant on appeal. Jury trial until the Court of Appeals decides on the Court's decision on a competency exam. terminated past due deadlines (Branciforte, Ralph) Modified on 10/15/1998 (Entered: 10/14/1998)
10/08/1998	100	CALENDAR ENTRY as to Jacob Zedner; Case called before Judge Thomas C. Platt on date of 10/8/98 @ 9:30 AM for Criminal Cause For Hearing On Subpoenas issued by Defendant. Jacob Zedner appearing Pro Se with LAS Attorney Tracey Gaffey as legal advisor to defendant. Govt: AUSA Leonard Lato. Court Reporter/ESR Harry Rapaport. Other appearances: Prudential Securities: Justin Sacca; US Dept. of Treasury: James Kramer-Wilt; Citibank: Petra Tasheff. Chinese Interpreter John Lau present to translate documents. Hearing begun IN CAMERA in jury room without presence of Govt. as ordered. Court reporter present and taking the minutes. Witnesses examined. Parties appear in Courtroom as 11:00 AM for ruling. Transcript of proceedings

FILING DATE	DOCKET NUMBER	DESCRIPTION
		ordered sealed by the Court. setting jury selection for 9:30 10/14/98 for Jacob Zedner before Judge Thomas C. Platt (Branciforte, Ralph) (Entered: 10/09/1998)
10/14/1998	102	Exhibit list by USA as to Jacob Zedner used for Hearing on 10/14/98 before USDJ Platt (Branciforte, Ralph) (Entered: 10/14/1998)
10/14/1998	103	Exhibit list by Jacob Zedner as to Jacob Zedner used for Hearing on 10/14/98 before USDJ Platt (Branciforte, Ralph) (Entered: 10/14/1998)
10/14/1998	106	Exhibit #32 by USA as to Jacob Zedner RE: Letter dtd. 5/2/97 from AUSA Leonard Lato to USDJ Platt providing notice that the Govt intends to introduce at trial, evidence of Mr. Zedner's other crimes, wrongs, and acts. (Branciforte, Ralph) (Entered: 10/19/1998)
10/15/1998	104	HEARING TRANSCRIPT filed in case as to Jacob Zedner for dates of 10/14/98 @ 9:30 AM; Court Reporter/ESR: Harry Rapaport (portion sealed) (Branciforte, Ralph) (Entered: 10/15/1998)
10/15/1998	–	SEALED DOCUMENT as to Jacob Zedner RE: Portion of Hearing Transcript conducted on 10/14/98

FILING DATE	DOCKET NUMBER	DESCRIPTION
		(pp. 15-17) before USDJ Platt. (Branciforte, Ralph) (Entered: 10/15/1998)
10/15/1998	–	SEALED DOCUMENT as to Jacob Zedner RE: Portion of Hearing Transcript conducted on 10/8/98 before USDJ Platt (pp. 1-61). (Branciforte, Ralph) (Entered: 10/15/1998)
10/15/1998	105	HEARING TRANSCRIPT filed in case as to Jacob Zedner for date of 10/8/98 @ 2:00 PM; Court Reporter/ ESR: Harry Rapaport (pp. 62-71) (Branciforte, Ralph) (Entered: 10/15/1998)
10/15/1998	–	SEALED DOCUMENT as to Jacob Zedner RE: Letter dtd. 10/15/98 from J. Kelley Nevling, Jr., Citibank, to USDJ Platt. (Branciforte, Ralph) (Entered: 10/19/1998)
10/19/1998	107	MEMORANDUM & ORDER as to Jacob Zedner: That the defendant be committed to the custody of the Attorney General for hospitalization and treatment in a suitable facility pursuant to 18 USC 4241(d). (Signed by Judge Thomas C. Platt dated: 10/19/98) CM (Branciforte, Ralph) (Entered: 10/20/1998)

FILING DATE	DOCKET NUMBER	DESCRIPTION
10/19/1998	108	ORDER That the defendant, Jacob Zedner be committed to the custody of the Attorney General, who shall hospitalize the defendant for a Psychiatric Exam pursuant to 18 USC 4241(d)(1) (Signed by Judge Thomas C. Platt, dated: 10/19/98) (Branciforte, Ralph) (Entered: 10/20/1998)
10/26/1998	109	NOTICE OF INTERLOCUTORY APPEAL by Jacob Zedner re [108-1] order for a Psychiatric Exam pursuant to 18 USC 4241(d)(1) Notice of Appeal, certified copy of order appealed from and certified copy of docket sheet forwarded to USCA. No fee paid. (Jafer, Halide) (Entered: 10/27/1998)
11/18/1998	112	SUPPLEMENTAL MEMORANDUM & ORDER as to Jacob Zedner That the Psychiatric Exam ordered on 10/19/98 is further supported by the Affidavit of US Pretrial Services Officer Patrick L. Mancini, annexed hereto, which has been called to the Court's attention. (Signed by Judge Thomas C. Platt, dated: 11/18/98) (affidavit annexed) (Branciforte, Ralph) (Entered: 11/25/1998)
11/20/1998	111	CALENDAR ENTRY as to Jacob Zedner; Case called before Judge Thomas C. Platt on date of 11/20/98

FILING DATE	DOCKET NUMBER	DESCRIPTION
		@ 9:30 AM for Criminal Cause for Govt's Application To Revoke Bail. Defendant Zedner, Pro Se, present with Legal Advisor Tracey Gaffey. Govt: Leonard Lato. Court Reporter/ESR Carolyn Barna. Govt's application to revoke bail heard and denied for reasons stated on the record. Court indicated it would wait and see outcome of defendant's pending criminal Queens County State Court case scheduled for 12/10/98. Briefing schedule has been set in Court of Appeals with respect to defendant's appeal in this case, but no argument date yet. (Branciforte, Ralph) (Entered: 11/25/1998)
04/23/1999	115	CONFERENCE TRANSCRIPT filed in case as to Jacob Zedner for dates of 5/2/97 @ 9:30 AM; Court Reporter/ESR: Ronald Tolkin (Branciforte, Ralph) (Entered: 04/23/1999)
10/26/1999	116	USCA Mandate as to Jacob Zedner re: [109-1] Interlocutory Appeal. Vacating the order of the District Court and Remanding for further proceedings. Copy of Mandate forwarded to Chambers for review. (Coleman, Laurie) (Entered: 10/26/1999)

FILING DATE	DOCKET NUMBER	DESCRIPTION
04/04/2000	119	CALENDAR ENTRY as to Jacob Zedner; Case called before Judge Thomas C. Platt on date of 4/4/00 at 9:30 a.m. for Criminal for Competency Hearing. Court Reporter/ ESR Dom Tursi. Only AUSA Gary Brown present. Reset status conference for 9:30 4/27/00 for Jacob Zedner before Judge Thomas C. Platt (Coleman, Laurie) (Entered: 04/07/2000)
04/06/2000	118	LETTER dated 4/3/00 from Tracey Gaffey, Associate Attorney (Legal Aid) to Judge Platt re: request that our appearance tomorrow be postponed. I have not gotten a new mental evaluation completed for the competency hearing, and Mr. Lato is still on trial. (Coleman, Laurie) (Entered: 04/06/2000)
04/27/2000	120	CALENDAR ENTRY before Judge Platt on 4/27/00 at 9:30 a.m. as to Jacob Zedner; for Criminal Cause for Competency Court Reporter/ ESR Mary Misiti Gov't: AUSA Leonard Lato Deft. Jacob Zedner, Pro se & Tracey Gaffey (LAS) to assist deft. Edward Zas (LAS) Appeals Bureau Ms. Gaffey to confirm in writing of proceedings to Mr. Zedner set competency hearing for 9:30 7/10/00, or for all submissions, to be determined in future,

FILING DATE	DOCKET NUMBER	DESCRIPTION
		for Jacob Zedner before Judge Thomas C. Platt (Coleman, Laurie) (Entered: 05/01/2000)
07/10/2000	121	CALENDAR ENTRY as to Jacob Zedner present; Case called before Judge Thomas C. Platt on date of 7/10/00 for Criminal competency hearing. AUSA Leonard Lato. Tracey Gaffey to assist Pro se deft. Court Reporter Jennifer Maue. Hearing held. Deft's witness Dr. Sanford Drob sworn and testifies. Parties are to file briefs on how they want the court to proceed in this case. Deft. to file his brief on 8/4/00. Govt. to file brief on 8/11/00. (O'Hara, Karen) (Entered: 07/13/2000) (O'Hara, Karen) (Entered: 07/13/2000)
07/18/2000	122	TRANSCRIPT filed in case as to Jacob Zedner for dates of 7/10/00; Court Reporter: Jennifer Maue (O'Hara, Karen) (Entered: 07/18/2000)
08/11/2000	125	LETTER dated 8/11/00 from Leonard Lato to Judge Platt re: in support of its position that the defendant Jacob Zedner is presently suffering from a mental disease or defect rendering him mentally incompetent to stand trial. (O'Hara, Karen) (Entered: 08/30/2000)

FILING DATE	DOCKET NUMBER	DESCRIPTION
08/21/2000	123	TRANSCRIPT filed in case as to Jacob Zedner for dates of 10/14/98; Court Reporter: H. Rapaport (O'Hara, Karen) (Entered: 08/21/2000)
08/23/2000	124	MEMORANDUM by Jacob Zedner in support of defendant's competency to stand trial. (O'Hara, Karen) (Entered: 08/23/2000)
03/07/2001	126	MOTION by Jacob Zedner to dismiss the indictment with prejudice pursuant to the Speedy Trial Act (Valle, Christine) (Entered: 03/12/2001)
03/07/2001	127	MEMORANDUM by Jacob Zedner in support of the [126-1] motion to dismiss the indictment with prejudice pursuant to the Trial Act (Valle, Christine) (Entered: 03/12/2001)
03/07/2001	129	LETTER dated 3/5/01 from Edward S. Zas to Judge Platt Re: copies of the notice of motion to dismiss and supporting papers. (Imrie, Robert) (Entered: 03/26/2001)
03/07/2001	133	MEMORANDUM by Jacob Zedner in support of the [126-1] motion to dismiss the indictment with prejudice pursuant to the Trial Act. (Imrie, Robert) (Entered: 04/04/2001)

FILING DATE	DOCKET NUMBER	DESCRIPTION
03/21/2001	128	MEMORANDUM ORDER as to Jacob Zedner denying [126-1] motion to dismiss the indictment with prejudice pursuant to the Speedy Trial Act as to Jacob Zedner (1), Set Sentencing for 3/30/01 at 9:30 a.m. before Senior Judge Thomas C. Platt (Signed by Senior Judge Thomas C. Platt, on 3/21/01) c/m (Imrie, Robert) (Entered: 03/23/2001)
03/22/2001	130	RESPONSE by USA as to Jacob Zedner in opposition to [126-1] motion to dismiss the indictment with prejudice pursuant to the Speedy Trial Act (Branciforte, Ralph) (Entered: 03/29/2001)
03/22/2001	131	AFFIDAVIT by Leonard Lato in opposition to [126-1] motion to dismiss the indictment with prejudice pursuant to the Trial Act (Branciforte, Ralph) (Entered: 03/29/2001)
03/28/2001	135	LETTER dated 3/28/01 from Edward S. Zas to Judge Platt Re: requesting the court to issue a stay, pending appeal, of its Memorandum and Order, dated 3/21/01. (Imrie, Robert) (Entered: 04/04/2001)
03/28/2001	137	NOTICE OF INTERLOCUTORY APPEAL by Jacob Zedner re [128-1] order Set Sentencing for

FILING DATE	DOCKET NUMBER	DESCRIPTION
		3/30/01 at 9:30 a.m. before Senior Judge Thomas C. Platt. Notice of appeal, certified copy of order and certified copy of docket sent to USCA. Copy of notice of appeal forwarded to chambers for review. (Lopez, Luz) Modified on 04/06/2001 (Entered: 04/06/2001)
03/29/2001	132	LETTER dated 3/29/01 from Leonard Lato to Judge Platt Re: in opposition to Jacob Zedner's motion for a stay, pending appeal of the Court's order committing him to the custody of the Attorney General for hospitalization and treatment in a suitable facility. (Imrie, Robert) (Entered: 04/03/2001)
03/29/2001	134	LETTER dated 3/29/01 from Leonard Lato to Judge Platt Re: in opposition to Jacob Zedner's motion for a stay pending appeal of the Court's Order committing him to the custody of the Attorney General for the hospitalization and treatment in a suitable facility. (Imrie, Robert) (Entered: 04/04/2001)
03/30/2001	136	CALENDAR ENTRY as to Jacob Zedner; Case called before Senior Judge Thomas C. Platt on date of 3/30/01 at 9:30 a.m. for Cr Cause for Conference Court Reporter/ESR O. Wicker Deft Zedner present

FILING DATE	DOCKET NUMBER	DESCRIPTION
		Pro Se and by LAS counsel Edward Zas; Govt: AUSA Leonard Lato. Case called. Deft and counsel for all sides present. Parties discuss the memo and order of the Court and the stay in the 2nd Circuit. The Court puts relevant events on the record. Govt and Deft put discussions on the record. Court exhibit #1-letter dated 3/22/01 by AUSA Lato marked into evidence. (annexed) (Imrie, Robert) (Entered: 04/04/2001)
04/05/2001	138	USCA Order that the motion for Stay be granted only to the extent that the District Court's order is stayed until April 20, 2001. Copy forwarded to chambers for review. (Lopez, Luz) (Entered: 04/06/2001)
04/25/2001	140	USCA Order for a stay pending appeal. The government does not oppose this request. Copy forwarded to chambers for review. (Lopez, Luz) (Entered: 04/25/2001)
06/11/2001	142	TRANSCRIPT OF CONFERENCE filed in case as to Jacob Zedner for dates of 11/8/96 at 9:30AM before Judge Thomas C. Platt; Court Reporter: Owen M. Wicker. (Valle, Christine) (Entered: 06/11/2001)

FILING DATE	DOCKET NUMBER	DESCRIPTION
03/12/2001	145	LETTER dated 3.11.02 from Tracy Gaffey to USDJ Platt re: Requesting that the Court rescind its order of commitment or in the alternative, shorten the period of commitment to thirty days. (Lopez, Luz) (Entered: 04/10/2002)
03/21/2002	143	USCA Mandate on Interlocutory Appeal as to Jacob Zedner re: It is hereby ordered, adjudged and decreed that the judgment of the District Court be and it hereby is affirmed. Copy of mandate forwarded to Chambers for review. (Duong, Susan) (Entered: 03/22/2002)
03/21/2002	146	LETTER dated 3.20.02 from Leonard Lato to USDJ Platt re: Opposition to letter motion [145-1] asking Court to rescind its order of commitment. The govt requests that the court schedule a conference at 11:00 on March 22 at which time the Govt will request that the US Marshal take custody of Zedner in accordance to the commitment Order. (Lopez, Luz) (Entered: 04/10/2002)
03/22/2002	144	CALENDAR ENTRY as to Jacob Zedner; Case called before Senior Judge Thomas C. Platt on date of 3/22/02 @ 11:00 a.m. for Conference. Defendant Zedner (Pro Se) present

FILING DATE	DOCKET NUMBER	DESCRIPTION
		with Federal Defender Counsel Tracey Gaffey. Govt: AUSA Leonard Lato. The Defendant is to surrender on 4/5/02 before noon. The Defendant is to be released 30 days after he arrives at the examining facility. (Branciforte, Ralph) (Entered: 03/25/2002)
04/01/2002	147	ORDER as to Jacob Zedner, The dft is commited to the custody of the Attorney General, who shall hospitalize the dft for Treatment in a suitable facility – (1) for such a reasonable period of time, not to exceed 30 days measured from the date the dft arrives at the facility, as is necessary to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the trial to proceed; and (2) for an additional reasonable period of time, not to exceed 30 days, upon notice to the Court that such additional reasonable period of time is required. The dft is directed to surrender to the US Marshal at 12 noon on 4/5/02. (Signed by Senior Judge Thomas C. Platt, on 4.1.02)cm (Lopez, Luz) (Entered: 04/10/2002)
04/01/2002	148	LETTER dated 4.01.02 from Jacob Zedner to USDJ Platt re: I am requesting from the Court a 10 day

FILING DATE	DOCKET NUMBER	DESCRIPTION
		delay to surrender. (Lopez, Luz) (Entered: 04/10/2002)
05/24/2002	150	LETTER dated 5/21/02 from A.F. Beeler, Warden, FMC Butner to USDJ Platt RE: Mr. Zedner was admitted on 5/1/02. Requesting that the evaluation period begin on the date of arrival and be extended for a full 120 days, as allowed by the statute (18 USC 4241(d)). (Branciforte, Ralph) (Entered: 05/30/2002)
05/24/2002	–	ENDORSED ORDER on [150-1] letter: Application granted. (Signed by Senior Judge Thomas C. Platt, on 5/24/02) EOD# 150 CM (Branciforte, Ralph) (Entered: 05/30/2002)
05/31/2002	151	Letter MOTION by Jacob Zedner to extend time, for comprehensive psychological evaluation ending on 8/27/02 [151-1] motion, [151-2] motion (Barhome, Sydelle) (Entered: 06/05/2002)
05/31/2002	–	ENDORSED ORDER as to Jacob Zedner granting [151-1] motion to extend time as to Jacob Zedner (1) granting [151-2] motion for comprehensive psychological evaluation ending on 8/27/02 as to Jacob Zedner (1) (Signed by Senior Judge Thomas C. Platt, on 5/31/02) (Barhome, Sydelle) (Entered: 06/05/2002)

FILING DATE	DOCKET NUMBER	DESCRIPTION
06/14/2002	152	LETTER dated 6.7.02 from Jacob Zedner to Tracey Gaffey re: requesting for you to put in a motion to get copies of the minutes and signatures of the grand jury. (Lopez, Luz) (Entered: 06/26/2002)
07/17/2002	153	LETTER dated 7.17.02 from USDJ Platt to Warden at Federal Medical Center in Butner, NC. re: Detainee has written a letter stating that his bond, which was posted for his release on bail, is still in full force and effect. Having checked, my courtroom clerk has advised that the bond is still in effect. (Lopez, Luz) (Entered: 07/24/2002)
10/03/2002	154	LETTER dated 9.30.02 from Jacob Zedner to USDJ Platt re: The Bureau of prisons promised to return personal and religious items to my wife. until this day, none of my possessions have been returned. (Lopez, Luz) (Entered: 10/28/2002)
12/31/2002	155	Letter MOTION by Jacob Zedner Requesting Modification of bail Conditions and that the bond be modified to an unsecured bond so that we may remove the liens against the two properties. (Lopez, Luz) (Entered: 01/07/2003)

FILING DATE	DOCKET NUMBER	DESCRIPTION
12/31/2002	–	ENDORSED ORDER as to Jacob Zedner granting [155-1] motion Requesting Modification of bail Conditions and that the bond be modified to an unsecured bond so that we may remove the liens against the two properties as to Jacob Zedner (1) (Signed by Senior Judge Thomas C. Platt, on 12.31.02) eod#155 cm (Lopez, Luz) (Entered: 01/07/2003)
04/02/2003	158	LETTER dated 4.2.03 from AUSA: Leonard Lato to USDJ Platt re: Requesting a status conference on 4/3/03. At the conference, the government will move to dismiss the indictment without prejudice. If the court grants the motion, the government will ask a grand jury to re-indict. (Lopez, Luz) (Entered: 04/08/2003)
04/03/2003	157	LETTER dated 4.2.0.3 from Tracey Gaffey Esq. to USDJ Platt re: Writing to oppose the government's intention to introduce evidence of Mr. Zedner's other crimes, wrongs and acts when Zedner claims that he acted with lawful intent. (Lopez, Luz) (Entered: 04/08/2003)
04/03/2003	159	CALENDAR ENTRY as to Jacob Zedner; Case called before Senior Judge Thomas C. Platt on date of 4.3.03 at 10:30 am. for Conference. Dft present with LAS

FILING DATE	DOCKET NUMBER	DESCRIPTION
		Counsel Tracy Gaffey. AUSA: Leonard Lato. trial set for 4/7/03 at 9:30 am. The gov will supersede the indictment dropping 2 counts. The speedy trial issue is addressed: the government is not dismissing the indictment b/c the speedy trial issue will still be present. The dft is not renewing a motion to dismiss that was previously denied by the Court. The court will wait until opening statements to decide on the 404 (b) question to see what the defense and prosecution plan to offer. Dfts witness Dr. Drob may be held up on another trial, defense counsel will communicate with the Court to finalize testimony plans. The parties have stipulated that his testimony may be taken out of turn. (Lopez, Luz) (Entered: 04/08/2003)
04/07/2003	156	CALENDAR ENTRY as to Jacob Zedner; Case called before Senior Judge Thomas C. Platt on date of 4.7.03 for Jury Trial. Jury trial begins, opening statements heard. Witnesses sworn, testimony heard. Scheduling Jury trial for 9:30 4/8/03 for Jacob Zedner before Senior Judge Thomas C. Platt The government dismissed counts 3 and 8 of the indictment. So Ordered. The govt moves to alter the indictment on

FILING DATE	DOCKET NUMBER	DESCRIPTION
		paragraph 9 to strike out "were counterfeit and", So Ordered. (Lopez, Luz) (Entered: 04/08/2003)
04/08/2003	160	Jury trial as to Jacob Zedner held (Lopez, Luz) (Entered: 04/09/2003)
04/08/2003	161	CALENDAR ENTRY as to Jacob Zedner; Case called before Senior Judge Thomas C. Platt on date of 4.8.03 at 9:30 for Jury Trial. Dft present on bond with LAS counsel Tracey Gaffey. AUSA: Leonard Lato. C/R: Harry Rapaport. Jury trial resumes. Stipulation entered on the record indicating that representatives from the FDIC and the SEC if called would testify that the financial institution victims are member of either administration. Witnesses sworn and testify. Setting Jury trial for 2:00 4/11/03 for Jacob Zedner before Senior Judge Thomas C. Platt (Lopez, Luz) (Entered: 04/09/2003)
04/11/2003	162	CALENDAR ENTRY as to Jacob Zedner; Case called before Senior Judge Thomas C. Platt on date of 4.11.03 at 2:00 pm. for Jury Trial. Dft present on bond with LAS counsel Tracy Gaffey. AUSA: Leonard Lato. C/R: Harry Rapaport. Jury trial resumes. Government rests. Dft puts on sworn witness. Defense rests. Government puts on

FILING DATE	DOCKET NUMBER	DESCRIPTION
		rebuttal witnesses. Witnesses sworn, testimony heard. Government rests Scheduling closing arguments and charge for 9:00 4/14/03 before Senior Judge Thomas C. Platt (Lopez, Luz) (Entered: 04/17/2003)
04/14/2003	163	CALENDAR ENTRY as to Jacob Zedner; Case called before Senior Judge Thomas C. Platt on date of 4.14.03 for Jury Trial. Dft present with LAS counsel Tracey Gaffey. AUSA: Leonard Lato. C/R: Owen Wicker/H. Rapaport. Closing arguments heard. Jury read charge. Court security officer sworn. Jury deliberates. Alternate Jurors 3-6 dismissed. The jurors still have not reached a unanimous verdict. Juror#8 is dismissed on consent of all parties because of a family emergency on 4/15/03. Alternate #1 takes her place. Setting Jury deliberations for 9:00 4/15/03 for Jacob Zedner before Senior Judge Thomas C. Platt (Lopez, Luz) (Entered: 04/17/2003)
04/15/2003	164	CALENDAR ENTRY as to Jacob Zedner; Case called before Senior Judge Thomas C. Platt on date of 4.15.03 at 9:30 am. for Jury Trial. Dft present with LAS counsel Tracey Gaffey. AUSA: Leonard Lato. C/R: Owen Wicker. Jury

FILING DATE	DOCKET NUMBER	DESCRIPTION
		deliberates. Jury informs the court they have a unanimous verdict. Jury verdict Guilty on counts 1,2, 4-7. The gov. dismissed counts 3 & 8 at the beginning of the trial. Jury Polled. Jury released. The dft will submit motions in writing. The gov moves to detain the dft based on the outcome of the jury trial, his risk of flight and prior criminal history. The dft asks for an increased bail package . The application is opposed by the gov. the court denies the application and grants the gov request. The dft is remanded into custody and informed of his right to appeal. probation notified and to prepare an expedited report. (Lopez, Luz) (Entered: 04/17/2003)
04/15/2003	–	JURY VERDICT as to Jacob Zedner Guilty: Jacob Zedner (1) count(s) 1-2, 4-7 (Lopez, Luz) (Entered: 04/18/2003)
04/15/2003	165	Exhibit and witness list as to Jacob Zedner (Lopez, Luz) (Entered: 04/18/2003)
04/25/2003	166	TRANSCRIPT filed in case as to Jacob Zedner for dates of 4.11.03 at 2:00 pm.; Criminal cause for trial. Court Reporter/ESR: Harry Rapaport. (Lopez, Luz) (Entered: 04/25/2003)

FILING DATE	DOCKET NUMBER	DESCRIPTION
07/31/2003	168	Minute Entry for proceedings held before Thomas C. Platt Status Conference as to Jacob Zedner held on 7/31/2003 at 9:30 am. Criminal cause for sentence adjournment. AUSA Burton Ryan present. Court Reporter: Ellen Combs. Sentencing adjourned to 8/25/03 at 9:30 am. (Lopez, Adriana) (Entered: 08/07/2003)
08/20/2003	169	MOTION for Psychiatric Exam *of dft and that a psychiatric report be filed with the Court. Filed* by Jacob Zedner. (Lopez, Adriana) (Entered: 09/08/2003)
08/20/2003	170	DECLARATION OF Tracey Gaffey in Support of the [169] MOTION for Psychiatric Exam *of dft and that a psychiatric report be filed with the Court. (Lopez, Adriana) (Entered: 09/08/2003)*
08/25/2003	171	Minute Entry for proceedings held before Judge Thomas C. Platt: Status Conference as to Jacob Zedner held on 8/25/2003. Dft present with Counsel Tracey Gaffey. AUSA: Wayne Baker. Defense counsel has filed a motion for a psychiatric examination. The dft issues a statement opposing this motion. The govt. opposes the motion. The court rules that defense counsel can hire a psychiatrist of their own choice and pay out of the CJA funds

FILING DATE	DOCKET NUMBER	DESCRIPTION
		but the court will not grant the motion as presented. Set hearing or status conference for 9/26/03 at 9:30 am. (Court Reporter Paul Lombardi.) (Lopez, Adriana) (Entered: 09/08/2003)
09/16/2003	172	TRANSCRIPT of Proceedings as to Jacob Zedner held on 8/25/03 at 9:45 am before Judge USDJ PLATT. Court Reporter: Paul Lombardi. (Lopez, Adriana) (Entered: 09/24/2003)
09/18/2003	173	ORDER – Is Ordered that Dr. Sanford Drob be allowed to examine Jacob Zedner in a private room or area in the Nassau County Correctional Center. Signed by Judge Thomas C. Platt on 9/18/03. cm (Lopez, Adriana) (Entered: 09/25/2003)
09/26/2003	174	Minute Entry for proceedings held before Thomas C. Platt: Status Conference as to Jacob Zedner called before Senior Judge Thomas C. Platt on date of 10/3/03 at 9:30 am. Criminal cause for sentence adjournment. AUSA: Wayne Baker present. Tracey Gaffey present Court Reporter: Harry Rapaport. Sentencing adjourned to 11/14/03 at 9:30 am. (Lopez, Adriana) (Entered: 10/20/2003)

FILING DATE	DOCKET NUMBER	DESCRIPTION
11/14/2003	179	Minute Entry for criminal cause for sentencing held before Thomas C. Platt: Docket Call as to Jacob Zedner held on 11/14/2003 at 9:30 A.M. Counsel for the government, A.U.S.A. Burton Ryan, present. Sentencing adjourned to 12/3/2003 at 1:30 P.M. before Senior Judge Thomas C. Platt. (Court Reporter Mary Ann Steiger.) (Dachille, Patti) (Entered: 12/01/2003)
11/17/2003	175	TRANSCRIPT of criminal cause on trial as to Jacob Zedner held on 4/7/03 at 9:40 a.m. before Judge Hon. Thomas C. Platt and a jury. Court Reporter: Harry Rapaport. (Dachille, Patti) (Entered: 11/21/2003)
11/17/2003	176	TRANSCRIPT of criminal cause on trial as to Jacob Zedner held on 4/8/03 at 9:45 a.m. before Judge Hon. Thomas C. Platt and a jury. Court Reporter: Harry Rapaport. (Dachille, Patti) (Entered: 11/21/2003)
11/17/2003	177	TRANSCRIPT of criminal cause on trial as to Jacob Zedner held on 4/11/03 at 2:00 p.m. before Judge Hon. Thomas C. Platt and a jury. Court Reporter: Harry Rapaport. (Dachille, Patti) (Entered: 11/21/2003)

FILING DATE	DOCKET NUMBER	DESCRIPTION
01/09/2004	180	Minute Entry for sentencing proceedings held before Thomas C. Platt on 1/9/04 @ 9:30: AUSA Stephen King Tracy Gaffey Sentencing adjourned to 1/15/2004 01:30 PM before Senior Judge Thomas C. Platt. The dft made a motion for downward departure. Motion denied for insufficient grounds. Hearing on the amount of loss: whether it was 2 bonds or 4. The dft withdraws his request for a hearing but the court feels a hearing must be held regarding this issue. (Court Reporter Perry Auerbach.) (Barhome, Sydelle) (Entered: 01/14/2004)
01/22/2004	181	Minute Entry for proceedings held before Thomas C. Platt: sentencing held on 1/22/2004 @ 2:00 PM for Jacob Zedner (1), Count(s) 1-2, 4-7. Dft present in custody with PDA counsel Tracey Gaffey. Gov't: Stephen King Probation: Nicole Pizzo. Statements of Dft and counsel heard. Dft is sentenced to a term of imprisonment of 63 months on each count to run concurrent with credit for time served. To be followed by five years of supervised release. Dft is remanded to the custody of the US Marshal. Special Assessment is imposed in the sum of $300.00 Dft is advised of his right to appeal. Dft moves for bail pending appeal.

FILING DATE	DOCKET NUMBER	DESCRIPTION
		Motion denied. The Court also advises the parties they may make a Rule 35 motion if they find case law regarding the issues presented prior to trial in Section 2F1.1 of the sentencing guidelines. (Court Reporter D. Tursi.) (Barhome, Sydelle) (Entered: 02/03/2004)
01/23/2004	182	JUDGMENT as to Jacob Zedner (1), Count(s) 1-2, 4-7. Dft was found guilty on Counts 1,2,4,5,6 &7 after a plea of not guilty. Dft is commited to the custody of the USBOP to be imprisoned for 63 months on each count to run concurrent with credit for time served and for time in the custody of the BOP for psychiatric evaluations. The dft is remanded to the custody of the US Marshal. Dft shall be on Supervised release five years. Special Assessment of $300 Count(s) 3, 8, Dismissed on the motion of the United States at the beginning of trial. Signed by Judge Thomas C. Platt on 1/23/04. (Barhome, Sydelle) (Entered: 02/03/2004)
01/26/2004	183	NOTICE OF APPEAL by Jacob Zedner re [182] Judgment, Copy of notice of appeal, copy of judgment and certified copy of the docket sheet forwarded to USCA. Copy of notice of appeal sent to Chambers. Service made by Clerk's Office. (Duong, Susan) (Entered: 02/12/2004)

FILING DATE	DOCKET NUMBER	DESCRIPTION
02/24/2004	184	Letter dtd. 1/20/04 from Tracey L. Eadie Gaffey, Esq., to Clerk, EDNY CI noting enclosure of documents for filing: competency Evaluation of Sandord L. Drob, PhD; 12/29/03 objection/sentencing letter from Tracey Gaffey, Esq; 9/25/03 objection letter from Tracey Gaffey, Esq.; Letter of Tami Zada. (Barhome, Sydelle) (Entered: 03/01/2004)
02/24/2004	187	Letter dtd. 9/25/03 from Tracey L. Eadie-Gaffey, Esq. to Hon. J. Platt of Competency Evaluation of Sanford L. Drob, PhD. (Barhome, Sydelle) (Entered: 03/01/2004)
02/24/2004	186	Letter from Tracey L. Eadie Gaffey, Esq. to Hon. J. Platt: December 29, 2003 objection/sentencing as to Jacob Zedner. (Barhome, Sydelle) (Entered: 03/01/2004)
02/24/2004	185	NOTICE: Competency Evaluation of Jacob Zedner written by Sanford L. Drob, Ph.D., on 9/12/03 (Barhome, Sydelle) (Entered: 03/01/2004)
02/24/2004	188	Letter dtd. 1/22/04 from Tami Zada to Hon. J. Platt noting her loving relationship to her father. (Barhome, Sydelle) (Entered: 03/01/2004)
03/15/2004	190	ORDER of USCA (certified copy) as to Jacob Zedner re [183] Notice of Appeal – Final Judgment. It is

FILING DATE	DOCKET NUMBER	DESCRIPTION
		hereby ordered that the motion for bail is denied and the appeal expedited. Appellant shall file a brief and appendix by 3/30/2004; appellee shall file a brief by 4/20/2004; appeal shall be heard the week of 4/26/2004, subject to the approval of the presiding judge. Copy of order forwarded to chambers for review. (Basile, Antonietta) (Entered: 04/20/2004)
03/26/2004	191	Acknowledgment from USCA received as to the receipt of the designation of the index to the record on appeal as to Jacob Zedner for [183] Notice of Appeal – Final Judgment filed by Jacob Zedner. USCA# 04-0821. (Basile, Antonietta) (Entered: 04/20/2004)
04/14/2004	192	Proposed Jury Instructions by Jacob Zedner (Lopez, Adriana) (Entered: 05/21/2004)
06/09/2005	193	MANDATE of USCA (certified copy): It is hereby ORDERED, ADJUDGED and DECREED that the judgment of conviction is AFFIRMED. Sentence VACATED and REMANDED for resentencing in accordance with the opinion of this court as to Jacob Zedner re [183] Notice of Appeal – Final Judgment (Attachments: # *1* Opinion). Copy of mandate sent to Chambers. USCA#

FILING DATE	DOCKET NUMBER	DESCRIPTION
		04-0821-cr. (Duong, Susan) (Entered: 06/14/2005)
10/27/2005	194	MEMORANDUM & ORDER: Dft has shown no sign of remorse or contriteness for what he has done or has tried to do. If the dft is produced for resentence, the Court intends to reimpose the sentence of sixty-three (63) months that the Court imposed on January 22, 2004. Ordered by Judge Thomas C. Platt on 10/27/05. (Barhome, Sydelle) (Entered: 10/28/2005)
10/31/2005	195	NOTICE OF APPEAL (Zas, Edward) (Entered: 10/31/2005)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 04-0821-cr

UNITED STATES OF AMERICA, Appellee,

v.

JACOB ZEDNER, Defendant-Appellant.

FILING DATE	DESCRIPTION
2/18/04	Copy of notice of appeal and district court docket entries on behalf of APPELLANT Jacob Zedner, filed. [SM]
2/23/04	Appellant Jacob Zedner motion for bail filed with proof of service. [SM]
2/24/04	Scheduling order #1 filed. Record on appeal due 3/15/2004. Appellants brief due 4/14/2004. Appellees brief due 5/14/2004. Anders response due 4/28/2004. Ready week 6/28/2004. [SM]
2/24/04	Notice to counsel re: scheduling order #1. [SM]
2/25/04	Declaration in support of the motion for bail filed with proof of service. [SM]
3/4/04	Government's response in opposition to motion for bail filed with proof of service. [SM]
3/10/04	Notice to counsel re: order filed 3/10/04. [SM]
3/10/04	Certified copy of the order, dated 3/10/2004 issued to the district court. [SM]
3/10/04	Scheduling order #1 filed. Appellants brief due 3/30/2004. Appellees brief due 4/20/2004. Ready week 4/26/2004. (See order filed 3/10/04) Before Hon. JMW, RJC, CJS.
3/10/04	Order FILED DENYING motion for bail by Appellant Jacob Zedner, endorsed on motion

FILING DATE	DESCRIPTION
	dated 2/23/2004. EXPEDITED APPEAL, Appellant shall file a brief and appendix by March 30, 2004; appellee shall file a brief by April 20, 2004; appeal shall be heard the week of April 26, 2004, subject to the approval of the presiding judge. Before Hon. JMW, RJC, CJS. (AH) [SM]
3/30/04	APPELLANT Jacob Zedner, brief RECEIVED. (Oversized. motion pending) [SM]
3/30/04	APPELLANT Jacob Zedner, appendix received. (motion pending) [SM]
3/30/04	Appellant Jacob Zedner motion for leave to file oversized brief filed with proof of service. [SM]
3/31/04	APPELLANT Jacob Zedner, sealed pre-sentence report received. [SM]
4/5/04	Notice to counsel re: order granting motion to file oversized brief. [AV]
4/5/04	Appellant Jacob Zedner brief FILED with proof of service. [AV]
4/5/04	**CORRECTED** appellant Zedner brief FILED with proof of service. [AV]
4/5/04	Appellant Jacob Zedner appendix vol. 1 filed w/pfs. [AV]
4/5/04	Appellant Jacob Zedner appendix vol. 2 filed w/pfs. [AV]
4/5/04	Order FILED GRANTING motion for leave to file oversized brief by Appellant Jacob Zedner, endorsed on motion dated 3/30/2004 (FOR THE COURT-AV). [AV]
4/8/04	APPELLANT Jacob Zedner, Record on appeal index in lieu of record filed. [SM]

FILING DATE	DESCRIPTION
4/20/04	APPELLEE United States of America, brief filed with proof of service. [SM]
4/26/04	APPELLANT Jacob Zedner, reply brief filed with proof of service. [SM]
4/28/04	Case heard before LEVAL, RAGGI, C.JJ, STEIN, D.J. [JC]
6/28/04	APPELLANT Jacob Zedner, 28(J) letter FILED. [SM]
7/8/04	APPELLANT Jacob Zedner, supplemental brief RECEIVED. (motion pending) [SM]
7/8/04	Appellant Jacob Zedner motion to file supplemental brief filed with proof of service. [SM]
7/21/04	Notice to counsel re: motion order filed 7/21/04. [SM]
7/21/04	APPELLANT Jacob Zedner, supplemental brief filed with proof of service. [SM]
7/21/04	Order FILED GRANTING motion to file supplemental brief by Appellant Jacob Zedner, endorsed on motion dated 7/8/2004. Supplemental brief due on 8/16/04, Appellee response (if any) due on 9/13/04. Before Hon. PNL, RR, Circuit Judges, Hon. SHS, District Judge. (TY) [SM]
9/13/04	APPELLEE United States of America, supplemental response brief filed with proof of service. [SM]
12/22/04	APPELLANT Jacob Zedner, 28(J) letter FILED. [SM]
12/30/04	APPELLEE United States of America, 28(J) letter FILED. [SM]

FILING DATE	DESCRIPTION
1/4/05	Letter dated 1/4/05 from Edward S. Zas, USDJ re: correcting a misstatement in the 28(J) letter filed on 12/30/04 received [SM]
1/26/05	APPELLANT Jacob Zedner, 28(J) letter FILED. [SM]
1/27/05	Record on appeal after index filed. (3 vols.) [VM]
3/8/05	Judgment of the district court is AFFIRMED the judgment of conviction, but VACATED the sentence and REMAND for resentencing by published signed opinion filed. (PNL) [RO]
3/8/05	Notice to counsel in re: Opinion dated 3/8/05. [RO]
3/14/05	Appellant Jacob Zedner motion extended time to file petition for rehearing to April 5, 2005 filed with proof of service. [RO]
3/15/05	Errata sheet re: filed. [RO]
3/16/05	Notice to counsel in re: Errata sheet dated 3/15/05 sent to all parties. [RO]
3/16/05	Order FILED GRANTING motion extended time to file petition for rehearing by Appellant Jacob Zedner, endorsed on motion dated 3/14/2005. to and including April 5, 2005. (AH) Extended Petition for rehearing is 4/5/2005. [RO]
3/23/05	Errata sheet re: filed. [RO]
4/5/05	Appellant Jacob Zedner Petition for rehearing and petition for rehearing en banc filed with proof of service. [RO]
5/24/05	Notice to counsel in re: Copy of order dated 5/24/05 sent to all parties. [RO]

FILING DATE	DESCRIPTION
5/24/05	Order FILED DENYING motion Petition for rehearing by Appellant Jacob Zedner, endorsed on motion dated 4/5/2005, Order FILED DENYING motion petition for rehearing en banc by Appellant Jacob Zedner, endorsed on motion dated 4/5/2005. (TWY) [RO]
6/2/05	Judgment MANDATE ISSUED. CLOSED [SM]

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES
OF AMERICA

- against -

JACOB ZEDNER,

Defendant.

INDICTMENT

Cr. No. 285
(18 U.S.C. §§ 472, 1344 and 3551 et seq.)

----------X

THE GRAND JURY CHARGES:

INTRODUCTION

At all times relevant to this Indictment:

1. Dime Savings Bank ("Dime Savings") was a financial institution with a branch in Great Neck, New York. The deposits of Dime Savings were insured by the Federal Deposit Insurance Corporation.

2. Marine Midland Bank ("Marine Midland") was a financial institution with a branch in Great Neck, New York. The deposits of Marine Midland were insured by the Federal Deposit Insurance Corporation.

3. Chase Manhattan Bank ("Chase") was a financial institution with a branch in Great Neck, New York. The deposits of Chase were insured by the Federal Deposit Insurance Corporation.

4. Dreyfus Service Corporation ("Dreyfus") was a financial institution with a branch in Great Neck, New York. Dreyfus was a broker and dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

5. Merrill Lynch, Pierce, Fenner & Smith ("Merrill Lynch") was a financial institution with a branch in Great Neck, New York. Merrill Lynch was a broker and dealer registered with the Securiteis and Exchange Commission under the Securities Exchange Act of 1934.

6. Smith Barney was a financial institution with a branch in Manhasset, New York. Smith Barney was a broker and dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

7. Prudential Securities ("Prudential") was a financial institution with a branch in Garden City, New York. Prudential was a broker and dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

THE FRAUDULENT SCHEME

8. The defendant JACOB ZEDNER would attempt to open accounts at financial institutions, place bearer bonds on margin and borrow against them.

9. The bearer bonds that the defendant JACOB ZEDNER attempted to place on margin at financial institutions purported to be issued by the United States, but the defendant JACOB ZEDNER then and there well knew and believed that they were counterfeit and had not been issued by the United States.

COUNTS ONE THROUGH SEVEN
(Financial Institution Fraud)

10. Paragraphs One through Nine of this Indictment are repeated and realleged as if fully set forth herein.

11. On or about the dates set forth below, within the Eastern District of New York, the defendant JACOB ZEDNER did knowingly and intentionally attempt to execute a scheme: ( ) [sic] to defraud a financial institution, and (2) to obtain moneys, funds and credits owned by and under the custody and control of a financial institution, by means of false and fraudulent pretenses, representations and promises:

COUNT	APPROXIMATE DATE	FINANCIAL INSTITUTION	BOND AMOUNT
1	3/4/96	Dime Savings	$10 million
2	3/7/96	Dreyfus	$10 million
3	3/8/96	Merrill Lynch	$10 million
4	3/8/96	Marine Midland	$10 million
5	3/11/96	Chase	$10 million
6	3/12/96	Smith Barney	$10 million
7	3/12/96	Prudential	$10 million

(18 U.S.C. §§ 1344 and 3551 *et seq.*)

COUNT EIGHT
(Possessing Counterfeit Bonds)

12. Paragraphs One through Nine of this Indictment are repeated and realleged as if fully set forth herein.

13. On or about and between March 4, 1996 and March 12, 1996, both dates being approximate and inclusive, within the Eastern District of New York, the defendant JACOB ZEDNER, with intent to defraud, did

knowingly and intentionally keep in his possession falsely made and counterfeit obligations of the United States.

(18 U.S.C. §§ 472 and 3551 *et seq.*)

A TRUE BILL

/s/ Bruce A. [Illegible]
FOREPERSON

ZACHARY W. CARTER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

BY: /s/ Loretta E. Lynch
ACTING UNITED STATES ATTORNEY
PURSUANT TO 28 C.F.R. 0.131

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	CR 96-285
v.	United States Courthouse Central Islip, New York
JACOB ZEDNER,	November 8, 1996 9:30 o'clock a.m.
Defendant.	

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TRANSCRIPT OF CONFERENCE
BEFORE THE HONORABLE THOMAS C. PLATT
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:	LORETTA E. LYNCH United States Attorney One Pierrepont Plaza Brooklyn, N.Y. 11201 By: LEONARD LATO, ESQ. Assistant U.S. Attorney
For the Defendant:	REYNOLDS CARONIA & GIANELLI 200 Motor Parkway Hauppauge, New York 11788 By: JAMES HAGNEY, ESQ.
Court Reporter:	Owen M. Wicker, RPR 1180 Federal Plaza Central Islip, N.Y. 11722 (631) 712-6102

Proceedings recorded by mechanical stenography; transcript produced by computer transcription.

[2] (Case called.)

MR. LATO: For the government, Leonard Lato.

MR. HAGNEY: James F. Hagney, 200 Motor Parkway, Hauppauge, New York.

Your Honor, we have a request for adjournment of this case with my client waiving speedy trial to January 27th, if that meets with the Court's approval. The government is not opposing that, Judge.

THE COURT: Wait a minute now.

I think if I'm going to give you that long an adjournment, I will have to take a waiver for all time.

MR. HAGNEY: I'm sorry, Judge. I couldn't hear you.

THE COURT: I think I will have to take a waiver for all time because I have some big cases and if I get bogged down with them you may be a long while before you get a trial.

MR. HAGNEY: I'm not in a position for that. I understand there are a number of things that are going to be happening and that it will take some time.

THE COURT: I say, I'm perfectly willing to give it to you but I have to take what I call a complete waiver where he can't come in like Brendan Sullivan tried to do in a case and say I only waive for so long as it is convenient for me to waive.

[3] MR. HAGNEY: Exactly, Judge.

We've waive [sic] for all time. That will not be a problem. That will not be an issue in this case.

THE COURT: If they ever did that again, I would move to disbar him and I wrote it up in the books and published it. I don't think he liked it very much. I told him where he had broken his word to the Court and he didn't like that, but it was true.

Mr. Zedner, you do not have to answer any questions. Anything you say may be used against you in this proceeding or some subsequent proceeding. You are entitled to have a lawyer of your own choice. If you can't afford a lawyer the Court will appoint a lawyer to you at no cost to you.

Do you understand your rights?

THE DEFENDANT: Yes, your Honor.

THE COURT: Now, every defendant in a criminal case according to Congress is entitled to a speedy trial. And that speedy trial according to them is to take place between 40 days after your initial arraignment and 70 days after your initial arraignment.

THE DEFENDANT: Yes.

THE COURT: And if the Court or the government, regardless how busy they are do not give you a speedy trial in that basic time, you are entitled to make your [4] motion to dismiss the indictment against you and technically the Court is obliged to dismiss the indictment, that is not to say the government couldn't reindict you, but that is the way the law reads. The laws says, the speedy

trial law, if you don't make a motion to dismiss an indictment for failure for speedy trial before the trial commences, you waive that right, you can't get it back.

That being the case I've taken the position, and nobody has yet challenged it who has read the Speedy Trial Act, that if you can waive by inaction, i.e., not raising the motion to dismiss, you can waive affirmatively, knowledgeably, intelligently your right to do so, your right to a speedy trial and your right to make a motion to dismiss for the speedy trial.

Are you with me?

(Counsel confer.)

THE DEFENDANT: Yes, your Honor.

THE COURT: But once you say, Judge, I'm not going to and I will not make a motion to dismiss the case against me for failure to give me a speedy trial, you cannot get it back.

You've waived it and it's gone.

Do you understand?

THE DEFENDANT: Yes, your Honor, I understand.

[5] THE COURT: So it's gone for all times.

I'm prepared to start your trial right away. You were indicted some time ago, you were arraigned some time ago and a considerable amount of time has gone by already. Your lawyer wants to put this case over until January.

THE DEFENDANT: Yes.

THE COURT: I have some fairly big cases pending in my docket, one of which is set to take eight months for trial. If you get locked in, if that starts before you start, you may have to wait until that is done.

THE DEFENDANT: May I ask a question?

I don't mind for the Court, of course I expect the matter for my situation – for my situation to be okay from Washington, D.C., whether I was involved in that case, but the restriction to go to Washington, D.C. –

MR. HAGNEY: Your Honor, we have no problem with the speedy trial issue but he's raising another issue right now on his bail requirement. There is a restriction for him traveling to certain locations, one of his issues is to travel to Washington, D.C. which is an issue separate and apart from the speedy trial issue.

THE COURT: I want to make sure he knows what he's waiving.

THE DEFENDANT: Yes, your Honor, I understand.

[6] THE COURT: Following along with the speedy trial waiver form.

The first paragraph says, and my question to you is, have you been advised and do you fully understand that you are entitled to a speedy trial under the sixth amendment of the United States Constitution, the Speedy Trial Act of 1974 and the rules of this Court, the circuit and the speedy plan adopted by this court?

THE DEFENDANT: Yes, your Honor.

THE COURT: And do you fully understand this Court is prepared to give you a speedy trial in compliance with the foregoing authorities and to commence this trial next Monday, if you are ready to go. That's November the 12?

THE DEFENDANT: I understand.

THE COURT: And you understand you and your lawyer have asked that you need not be given a speedy trial and have stated and represented to the Court you wish to waive your rights to the speedy trial under the sixth amendment, et seq., and rules of this circuit and under the speedy trial plan adopted by this Court. Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you fully understand if you do so waive your rights to a speedy trial you do so waive any [7] and all rights to make a motion addressed to dismiss the indictment against you for failure of the Court or the government to give you a speedy trial and you waive all of your rights to make a speedy trial and to make a motion or motions for all time. You waive them.

THE DEFENDANT: Yes.

THE COURT: Have any threats or promises of any kind been made to induce to you waive your rights to a speedy trial and your rights to dismiss the indictment?

THE DEFENDANT: Not yet, your Honor. Thank you.

THE COURT: Have you been coerced by anyone into making such waiver?

THE DEFENDANT: No, sir.

THE COURT: Are you making such waivers voluntarily and of your own free will because you wish to do so and for no other reason?

THE DEFENDANT: Yes, your Honor.

THE COURT: Have you discussed your waivers fully with your attorney?

THE DEFENDANT: Yes.

THE COURT: – Now, in front of the Court.

THE DEFENDANT: Yes, your Honor.

THE COURT: How old are you?

THE DEFENDANT: 42, your Honor.

THE COURT: And what kind of education do you [8] have?

THE DEFENDANT: Your Honor, most of the time Hebrew school – Hebrew high school, 12 years.

THE COURT: And –

THE DEFENDANT: And Hebrew – what do they call it?

THE COURT: College?

THE DEFENDANT: Theology. They calling it theology, whatever you call it.

THE COURT: How many years of that?

THE DEFENDANT: Two years. Again, the Hebrew sector.

THE COURT: Well, we have religious schools here.

THE DEFENDANT: Yes.

THE COURT: And here as well as elsewhere in the world.

Having been advised of your rights to a speedy trial and your rights to make a motion and to dismiss in the event you are not given a speedy trial, do you hereby waive all rights and waive them for all times?

THE DEFENDANT: Yes, your Honor.

THE COURT: You may sign the waiver in open court and I'll enter an order finding the waiver is voluntarily and knowledgeably made, and Ms. Giangarra will swear you [9] in and take your oath.

(Whereupon, the defendant was duly sworn.)

THE DEFENDANT: Yes, your Honor.

THE COURT: Now, do you want to go over until January 6th for another status, Counsel.

MR. HAGNEY: Excuse me, Judge?

THE COURT: Do you want to go over to January 6th or the 3rd for another status?

MR. HAGNEY: We were requesting January 31st, your Honor.

THE COURT: January 31st is a Friday. All right. We'll see you then.

MR. HAGNEY: Thank you very much, Judge.

THE COURT: Thank you.

(Proceedings adjourned.)

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
LONG ISLAND OFFICE

NOV 06 1996

TIME A.M.
TIME P.M.

WAIVER OF SPEEDY TRIAL RIGHTS [NON CUSTODY CASE] CR-96-285 (TCP)

I, JACOB ZEBNER, being duly sworn, depose and say that:

1. I have been advised and fully understand I am entitled to a speedy trial under the Sixth Amendment to the United States Constitution, the Speedy Trial Act of 1974 (18 U.S.C. § 3161 et seq.), the Rules of this Circuit, and the Speedy Trial Plan adopted by this Court.

2. I have been advised and fully understand that this Court is prepared to give me a speedy trial in compliance with the foregoing authorities and commence such trial on November 12, 1996.

3. My counsel and I have requested that I not be given a speedy trial and have stated and represented that I wish to waive my rights to a speedy trial under the Sixth Amendment to the Constitution, under the Speedy Trial Act of 1974 (18 U.S.C. § 3161 et seq.), under the Rules of this Circuit and under the Speedy Trial Plan adopted by this Court.

4. I have been advised and fully understand that if I do so waive my rights to a speedy trial, I also waive any and all rights to make a motion to dismiss the indictment (information) against me for failure of the Court to give me a speedy trial and that I waive all of such rights to a speedy trial and to make such a motion or motions for all time.

5. No promises or threats of any kind have been made to me to induce me to waive my rights to a speedy trial and my rights to move to dismiss.

6. I have not been threatened or coerced by anyone into making such waivers.

7. I am making such waivers voluntarily and of my own free will because I wish to do so and for no other reason.

8. I have discussed my waivers fully with my attorney.

9. I am 42 years of age and I have completed 12 years of school, 2 years of college and 0 years of post graduate work.

10. I have been advised of and fully understand my rights to a speedy trial and my rights to make a motion to dismiss in the event I am not accorded a speedy trial and I hereby waive all such rights and so waive them for all time.

Defendant

Witnessed and approved:

Attorney for Defendant

Subscribed and sworn to before me this 8th day of November, 1996.

Deputy Clerk

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	CR 96-285
	U.S. Courthouse
JACOB ZEDNER,	Uniondale, N.Y.
Defendant.	January 31, 1997 9:30 a.m.

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TRANSCRIPT OF CONFERENCE
BEFORE THE HONORABLE THOMAS C. PLATT
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:	ROSLYNN MAUSKOPF United States Attorney 100 Federal Plaza Central Islip, N.Y. 11722 By: LEONARD LATO, ESQ. Assistant U.S. Attorney
For the Defendant:	JAMES HAGNEY, ESQ.
Court Reporter:	Owen M. Wicker, R.P.R. 100 Federal Plaza Central Islip, NY 11722 (631) 712-6102

Proceedings recorded by mechanical stenography; transcript produced by computer transcription.

[2] (Case called.)

MR LATO: Leonard Lato.

MR HAGNEY: James Hagney.

MR LATO: For the government Leonard Lato. Good morning, your Honor.

MR HAGNEY: James F. Hagney for the defendant. Good morning, Judge.

THE COURT: Are there several defendants in this case?

MR LATO: No, your Honor, just one.

MR HAGNEY: One, your Honor.

THE COURT: How come Petrizzo's mail got stuck in here? Shall I put the blame where it properly belongs in the Clerk's Office.

What do we want to do here gentlemen?

MR LATO: I would like to try the case sometime in 1997. Your Honor, the defendant has waived for all time but I would like to try it before then.

THE COURT: Well, are we ready otherwise?

MR HAGNEY: Your Honor, we are actually not and what has happened thus far, your Honor, we've waived and we also last time entered into a written stipulation where we've waived not only the speedy trial time but our right to bring a speedy trial motion which my client would readily consent to.

[3] THE COURT: You don't have to do it twice because once you've waived you can't get it back.

MR HAGNEY: My client is charged with possession of certain U.S. bonds to that go back to 1935. We are still in the process, your Honor, of trying to tap on the proper channels to authenticate those bonds, your Honor,

and unfortunately these were bonds that involved the US government, it involves perhaps, your Honor, the need to contact and get in touch with the appropriate people to perhaps demonstrate the authenticity of these bonds. It has been a process that has taken a lot of time. We've been in contact with lot of people and I know Mr. Lato is interested in this case coming to an end at some point in time.

I would ask your Honor for one more adjournment to May 2nd, your Honor, at which time we would set a trial date at that point in time, and if that date were to be toward the end of this year, your Honor, I have no objection to that at all.

That would be my request.

THE COURT: The end of the year? Now, these 1935 bonds, are they US treasury bonds.

MR HAGNEY: Well, as far as we know, your Honor, yes. That seems to be one of the issues here.

THE COURT: Do you have them?

[4] MR LATO: We have what has been referred to as "the bonds," your Honor.

THE COURT: They are not bonds?

MR LATO: No, not unless the United States can be spelled incorrectly, then it would still be a bond. No, it's not a bond, according to the government.

THE COURT: You didn't issue them?

MR LATO: I did not.

THE COURT: The claim is that these are counterfeit bonds.

MR LATO: That's correct, your Honor.

THE COURT: And they spelled United States U-S-I-N-T.

MR LATO: Not that I got. United started with an O.

THE COURT: Well, then there is not much question but they are counterfeit. How can you suggest they might be authentic?

MR HAGNEY: Your Honor, I'm not certainly a expert on any bonds but I'm told in certain bonds that are issued oftentimes there are things done to those bonds for reasons that I certainly don't have the capacity to testify to, your Honor.

THE COURT: Have you had an expert witness on [5] the subject?

MR HAGNEY: The problem, your Honor, there are two issues.

You can certainly get an expert that says it was spelled on that date –

THE COURT: In 1935, they were Onited bonds?

MR HAGNEY: Your Honor, I can only tell you some of the information.

THE COURT: I was alive in 1935. I don't remember any such – any news articles or anything like that about that time.

MR HAGNEY: The problem here, your Honor, these bonds were issued or prepared or were involved with the Chinese bonds.

THE COURT: Oh, they were Chinese bonds?

MR HAGNEY: They were issued in connection with them apparently, your Honor, and again the only thing –

THE COURT: Made in China.

And your client didn't think there was anything wrong with it?

MR HAGNEY: That's perhaps one of the issues, your Honor, whether or not he knew or should have known they were counterfeit.

At this point in time what we are trying to establish is whether or not there is someone that perhaps [6] might attest to the authenticity of the bonds.

THE COURT: The authenticity. How will you do that? I find it very difficult to believe anybody in the Treasury Department will authenticate these bonds and I'm trying to grasp what might be out there.

MR HAGNEY: Your Honor, I don't know if that person will lie necessarily within the Treasury Department but the person may lie within the government and that's the effort being made at this time, Judge.

THE COURT: The only people I know that are charged with this apart from the people in the Treasury Department are the Secret Service people. You better get some ex-Secret Service agent.

MR HAGNEY: That may be a possibility, Judge, but I'm certainly not speaking on my own personal knowledge in my capacity. I also have a bond expert, but I would

just like to have the opportunity to digest what my client and others have relayed to me.

If it turns out that our efforts are not successful, so be it, but I would like to have that opportunity on the part of the defendant, your Honor. That's all.

THE COURT: Well, I don't think I can give you that much time. Apparently the banks took them in as security?

[7] MR LATO: No, they didn't, your Honor.

THE COURT: They didn't?

MR LATO: No.

MR HAGNEY: There are some issues there, your Honor, with respect to actually what the nature of the conversations were with the bank with respect to the bonds, but that is kind of a secondary issue, Judge.

THE COURT: Well, it may be a primary issue.

When was this indictment or information handed up?

MR LATO: April 4th.

THE COURT: (Perusing)

April 1st for trial. I may not reach you but I may reach you shortly thereafter. This is a year old. That's enough for a criminal case.

MR HAGNEY: Judge, may I ask for sometime beyond April 1st to give us some opportunity to pursue this? My client has waived the speedy trial time.

THE COURT: We can't carry a case with in this kind of posture forever.

MR HAGNEY: I understand.

The government wanted to set a trial date during this year; I'm not objecting to that. If we can try the case later on in 1997, to try it –

THE COURT: May 5th.

[8] Get to work on it.

MR HAGNEY: All right, Judge. That's for trial, your Honor.

THE COURT: That's the date I'm tentatively scheduling for trial, assuming I can free myself up.

MR HAGNEY: Shall I check with the [sic] on that date –

THE COURT: Yes.

MR HAGNEY: Thank you very much, your Honor.

(Proceedings adjourned.)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	
– v –	**96 Cr. 285 (TCP)**
JACOB ZEDNER,	
Defendant.	

POST-HEARING MEMORANDUM OF LAW IN SUPPORT OF JACOB ZEDNER'S COMPETENCY TO STAND TRIAL

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	
– v –	**96 Cr. 285 (TCP)**
JACOB ZEDNER,	
Defendant.	

POST-HEARING MEMORANDUM OF LAW IN SUPPORT OF JACOB ZEDNER'S COMPETENCY TO STAND TRIAL

Preliminary Statement

Defendant Jacob Zedner respectfully submits this memorandum of law in support of his competency to stand trial. The evidence presented at the competency hearing

on July 10, 2000 – including medical testimony, the representations of defense counsel, and Mr. Zedner's demeanor in court – demonstrates by a clear preponderance of the evidence that he understands the proceedings against him and is able to consult with his counsel with a reasonable degree of rational understanding.

Moreover, Mr. Zedner no longer insists on proving at trial the authenticity of the documents at issue in this prosecution. Rather, he is willing to allow counsel, on his behalf, to defend against the charges on the ground that, at the time of the alleged conduct, Mr. Zedner honestly *believed* that the documents were genuine, and thus lacked the intent to defraud anyone.

In these circumstances, this Court should find that Mr. Zedner is competent and should schedule this matter for trial as soon as possible. The alternative – finding Mr. Zedner incompetent and remanding him to the custody of the Attorney General for treatment – is not supported by the law or the facts, will further delay this prosecution, and will not promote the interests of justice.

Facts

A. The Charges.

As the Court is aware, Mr. Zedner was indicted in this case more than four years ago. He is charged with seven counts of attempting to defraud financial institutions, in violation of 18 U.S.C. § 1344, and one count of possessing counterfeit obligations of the United States, in violation of 18 U.S.C. § 472. The government contends that, over a one-week period in March of 1996, Mr. Zedner tried to open accounts at a number of financial institutions by

using bearer bonds purported to be issued by the United States. The bonds, on their face, contained a number of obvious spelling errors and other indicia that they could not possibly be real. The banks immediately recognized that the bonds were phony; none of them lost any money.

The government now seems to agree with the medical evidence showing that Mr. Zedner suffers from mental illness and delusions that cause him to believe that the bonds in this case are genuine. The government has alleged, however – and must prove beyond a reasonable doubt at trial – that Zedner in 1996 "well knew and believed that [the bonds] were counterfeit and had not been issued by the United States." *See* Indictment, ¶ 9. We do not believe that the government will be able to prove this allegation at trial.

B. The Competency Hearing.

The sole witness at the competency hearing was Dr. Sanford L. Drob, a noted expert in the field of forensic psychology. Dr. Drob's credentials are impressive. He is the director of psychological assessment at Bellevue Hospital, where he has been employed since 1981. Tr. 4.[1] He also is the senior psychologist on the Bellevue Prison Ward, and has conducted competency hearings for the City of New York since 1984. Tr. 4. He also holds two doctorates, one in clinical psychology and one in the philosophy of psychology. Tr. 4.

Dr. Drob conducted a thorough examination of Mr. Zedner. He concluded that, while Zedner suffers from a

[1] References to "Tr." are to the transcript of the competency hearing conducted on July 10, 2000.

delusional disorder, he meets the test for competency. In Dr. Drob's opinion, Mr. Zedner is functioning "fairly well," he "understands the charges against him," and he is able to assist counsel in his defense. Tr. 20-21. Dr. Drob's main concern was that Zedner might insist upon trying to prove at trial that the bonds in this case are genuine. If he did not insist upon this defense, Dr. Drob testified, "then he meets the rest of the criteria for competency." Tr. 24. In Dr. Drob's words:

> If in fact he is able to put his circumscribed delusion in the corner and proceed with a defense such as lack of intent or insanity, then I guess he could go [to trial]. I mean, then I would find him competent. There are lots of people who are insane who go to trial with an insanity defense who still retain some of their delusional thoughts. We find them competent. He has all the other elements of competency.

Tr. 26. This conclusion of competency accords with the conclusion reached previously by another expert, Dr. Naomi Goldstein, who examined Mr. Zedner in 1997 and also found him competent. The government did not call any expert (or any other witness) to testify that Mr. Zedner is not competent.

Dr. Drob's testimony was supported by the views of defense counsel. As counsel advised the Court at the hearing, we believe that Mr. Zedner is competent and that he "is willing to have the Federal Defenders as counsel for all purposes, and to assist in his defense." Tr. 2. This remains true as of this writing.

Finally, as the Court saw at the July 10 hearing, Mr. Zedner's demeanor has changed noticeably since the first competency hearing in 1998. Although Dr. Drob's testimony

about him was less than flattering, Mr. Zedner listened calmly as Dr. Drob testified, he did not interrupt the proceedings, he did not insist on testifying, and he consulted with counsel during the competency hearing. In short, he was fully alert and cooperative.

Argument

THE EVIDENCE SHOWS THAT MR. ZEDNER IS COMPETENT TO STAND TRIAL.

A. The Standard for Competency and the Burden of Proof.

In *Dusky v. United States*, 362 U.S. 402 (1960) (per curiam), the Supreme Court set forth the test for competency: the defendant must have "sufficient *present* ability to consult with his lawyer with a reasonable degree of rational understanding and . . . a rational as well as a factual understanding of the proceedings against him." *Id.* at 402 (emphasis added). The defendant may not be committed to the custody of the Attorney General for treatment unless "the court finds by a preponderance of the evidence that the defendant is presently suffering from a mental disease or defect rendering him mentally incompetent to understand the nature and consequences of the proceedings against him or to assist properly in his defense. . . . " 18 U.S.C. § 4241(d). The mere possibility that a defendant might become incompetent in the future is not sufficient.

Neither the Supreme Court nor the Second Circuit has squarely decided which party bears the burden of proof at a competency hearing. *See United States v. Nichols*, 56 F.3d 403, 410 (2d Cir. 1995) (declining to resolve the issue). However, the overwhelming weight of authority

holds that the burden of proof falls on the government. *See id.* at 410 (citing cases). In this case, it is especially appropriate to place the burden of proof on the government, because a defendant is presumed to be competent, and the government is in the unusual position of arguing against this presumption. *See United States v. Duran-Duran*, 1990 WL 49357, *1 (N.D.N.Y. 1990) (noting that one can infer from the text of 18 U.S.C. § 4241(d) "that a presumption of competency exists" and that the burden of proof falls "on the party asserting that the defendant is presently incompetent to stand trial"). As discussed below, the government has not met its burden.

Finally, before turning to the evidence, it is important to note that the question of Mr. Zedner's mental competency is entirely distinct from whether he has a valid defense to the charges against him. As the Second Circuit has declared, "the insanity defense and the matter of competence to stand trial are independent of one another because they involve [the defendant's] mental states at different times and because the ultimate questions are different." *United States v. Gold*, 790 F.2d 235, 238 (2d Cir. 1986). An insanity defense would focus on Mr. Zedner's mental state at the time of his alleged conduct in 1996 and on such questions as whether he was "unable to appreciate the nature and quality or the wrongfulness of his conduct." *Id.* "By contrast, the matter of [the defendant's] competence to stand trial focuses on his current mental state and on such questions as his comprehension of the charges and of the nature of the proceedings against him, and his ability to assist properly in the preparation of his defense." *Id.* For these reasons, Congress has provided that "[a] finding by the court that the defendant is mentally competent to stand trial shall not prejudice the defendant in

raising the issue of his insanity as a defense to the offense charged, and shall not be admissible as evidence in a trial for the offense charged." 18 U.S.C. § 4241(f).

B. The Government Has Failed to Show that Mr. Zedner Is Not Competent.

The government has not shown by a preponderance of the evidence that Mr. Zedner is incompetent. Indeed, it has not called a single witness to testify that Mr. Zedner is not competent at the present time. On the contrary, the evidence shows that he understands the proceedings, is able and willing to assist in his defense, and that his delusions will not interfere with counsel's ability to present a viable "lack of intent" defense.

In deciding competency, the Court should consider "evidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion." *Drope v. Missouri*, 420 U.S. 162, 180 (1975). Moreover, the Court may place considerable weight on the opinion of defense counsel, who "will often have the best-informed view of the defendant's ability to participate in his defense." *Medina v. California*, 505 U.S. 437, 450 (1992) (citations omitted). *See also United States v. Vamos*, 797 F.2d 1146, 1150 (2d Cir. 1986) ("failure by trial counsel to indicate the presence of such difficulties [as an inability to assist in the defense or to comprehend the proceedings] provides substantial evidence of the defendant's competence.").

When these factors are considered, Mr. Zedner's competency becomes apparent. To be sure, his beliefs about the validity of the bonds in this case and the secret workings of the Federal Reserve Board are "irrational," *Drope*, 505 U.S. at 450, but these beliefs will not interfere

with Mr. Zedner's defense. On the contrary, those beliefs *are* the defense. And, "[i]t is well-established that some degree of mental illness cannot be equated with incompetence to stand trial." *Vamos*, 797 F.2d at 1150-51 (citing *Hall v. United States*, 410 F.2d 653, 658 (4th Cir. 1969)). *See also Burket v. Angelone*, 208 F.3d 172, 192 (4th Cir. 2000) ("neither low intelligence, mental deficiency, nor bizarre, volatile, and irrational behavior can be equated with mental incompetence to stand trial") (citation omitted).

Mr. Zedner's demeanor also supports a finding that he is competent. As the Court saw at the hearing, he is alert and cooperative. He no longer insists upon serving subpoenas on high-level government officials or proving that the bonds in the case are valid.

Furthermore, as discussed above, Dr. Drob's testimony supports a finding of competency. He testified without hesitation that Mr. Zedner understands the charges and the proceedings and that he is able to consult with counsel. Drob's only concern was whether Zedner would insist upon presenting an irrational defense. That concern, a valid one, has not materialized. There is no reason to believe that Mr. Zedner's current willingness to cooperate with and assist counsel will not continue, especially if trial takes place soon.

Under all of these circumstances, the case law warrants a finding of competency. In *United States v. Vamos*, 797 F.2d 1146 (2d Cir. 1986), for example, the Second Circuit affirmed the district court's finding of competency even though defense counsel had told the court that the defendant was "'totally beyond reason' and unable to assist in the preparation of her defense," and a psychiatrist had

"testified to having serious doubts about [the defendant's] competency to stand trial." *Id.* at 1149. The defendant, like Mr. Zedner, made claims having a "delusional flavor," *id.*, but she was nevertheless able to stand trial. The same is true of Mr. Zedner.

Similarly, in *United States v. Nichols*, 56 F.3d 403, 411-13 (2d Cir. 1995), the Second Circuit affirmed a finding of competency despite five psychiatric reports that suggested the defendant suffered from paranoid delusions. Furthermore, in *United States v. Morrison*, 153 F.3d 34 (2d Cir. 1998), the district court found the defendant competent even though a psychologist could not rule out the possibility of delusional ideas, and, in fact, had found evidence that the defendant suffered from "grandiose and paranoid delusions." *Id.* at 39. The Court of Appeals affirmed.

Mr. Zedner is at least as competent as the defendants who were found competent in *Nichols, Vamos, Morrison*, and in many other cases. *See, e.g., Noland v. French*, 134 F.3d 208, 211, 219 (4th Cir. 1998) (defendant competent despite prior psychiatrist's opinion that defendant was mentally ill and dangerous and testimony of defendant and counsel that defendant was incompetent); *Moody v. Johnson*, 139 F.3d 477, 482 (5th Cir. 1998) (defendant competent despite experts' testimony that brain damage left defendant unable to consult with counsel); *Nguyen v. Reynolds*, 131 F.3d 1340, 1346 (10th Cir. 1997) (defendant competent despite aberrant behavior and expert testimony that defendant may have mental disorder where defendant had no history of mental illness, and displayed no irrational behavior at trial).

Finally, while Mr. Zedner's competency is supported by the facts and the law, there are also important practical considerations that militate in favor of a finding that he is competent. After years of representing him in this case, the Federal Defenders have earned Mr. Zedner's trust and confidence. If the Court finds him competent, this trust will be enhanced and the trial of this four-year old case can proceed expeditiously. Indeed, Mr. Zedner is prepared to waive a jury trial and proceed to trial before the Court immediately.[2]

On the other hand, if Mr. Zedner is found incompetent and remanded, as the government urges, the consequences are unpredictable. First, he is likely to lose confidence in his current counsel and may return to his former uncooperative state. Moreover, a finding of incompetency is immediately appealable, and thus will further delay this matter.[3] Even if such a finding is affirmed, there will be a delay of several months while Mr. Zedner is treated by prison officials, and there is no guarantee that Zedner will return from prison very different than he is now. *See* Tr., 19 (estimating that the chances are "much less than 50 percent" that Zedner "will come back much different"). And, even if prison officials conclude in several months that Mr. Zedner is competent, he might insist at that point on trying this case before a jury *pro se*, which he would have a constitutional right to do. This would not be in anyone's interest.

---

[2] The government, however, has informed counsel that it will not consent to a bench trial.

[3] On the other hand, a finding that Mr. Zedner is competent would not be final and appealable unless and until he is convicted and sentenced.

In sum, the law, the evidence, and the interests of justice and judicial efficiency warrant a finding that Mr. Zedner is competent to stand trial.

Conclusion

For these reasons, this Court should find that Mr. Zedner is competent and should schedule this case for trial.

Dated: New York, New York
August 4, 2000

Respectfully submitted,

LEONARD F. JOY
The Legal Aid Society
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By: /s/
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U.S. Department of Justice

[LOGO]

United States Attorney
Eastern District of New York

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United States Attorney's Office
300 Rabro Drive
Hauppauge, New York 11788

August 11, 2000

The Honorable Thomas C. Platt
United States District Judge
Eastern District of New York
2 Uniondale Avenue
Uniondale, NY 11553

Re: United States v. Jacob Zedner
Docket No. CR 96-285 (TCP)

Dear Judge Platt:

The Government submits this post-hearing letter in support of its position that the defendant Jacob Zedner is presently suffering from a mental disease or defect rendering him mentally incompetent to stand trial.

Charges

In early March 1996, Zedner approached financial institutions with the aim of opening an account with "Treasury bonds" having a face value of $10 million. The bonds, containing misspellings such as "Onited Staes of America," were bogus.

Zedner gave the agents who arrested him different explanations for the misspellings. One explanation was

that the misspellings represented a "secret code" used to establish the bond's legitimacy. To complement his incredible explanations, Zedner stated that he had received the bonds from Taiwan's "Eagle Chang" and that the bonds were given to Chiang Kai-shek when he fled to Taiwan during the communist takeover of China.

Pre-Competency Proceedings

After his arrest on March 13, 1996, Zedner appeared before Magistrate Judge Lindsay, who appointed James Hagney to represent Zedner. Zedner was indicted on April 4, 1996, and appeared for arraignment before the Court on April 16, 1996.

At a status conference held on May 2, 1997, which was the Friday before jury selection, the Court, *sua sponte*, ordered the appointment of Dr. Naomi Goldstein, a board-certified psychiatrist, to examine Zedner. The Court adjourned the trial pending receipt of Dr. Goldstein's report. (A 8).

Competency Proceedings

By letter dated August 5, 1997, Dr. Goldstein informed the Court that Zedner was mentally competent to stand trial.

At a status conference held on September 8, 1997, the district court granted Zedner's motion to have Mr. Hagney relieved, to proceed *pro se* and to have Tracey Gaffey of the Legal Aid Society represent him in an advisory capacity.

On the date scheduled for jury selection, the Court asked standby counsel and the prosecutor to conference a

matter in chambers. The Court stated that Zedner's proposed defense – that the bonds were genuine – led it to question Zedner's competence. At that point, the Government moved, under 18 U.S.C. § 4241, to have Zedner committed to the custody of the Attorney General for a competency examination.

The Court discharged the prospective jurors and held a competency hearing. Zedner represented himself, with Ms. Gaffey as standby counsel.

By memorandum and order dated October 19, 1998, the Court held:

> Defendant is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that defendant is unable to understand the nature and consequences of the proceedings against him and to assist properly in his defense. Thus, a thorough and extensive psychiatric examination of defendant is essential. For that reason, the Court is ordering that he be committed to the custody of the Attorney General for hospitalization and treatment in a suitable facility pursuant to 18 U.S.C. § 4241(d).

Zedner appealed. The Court of Appeals held that this Court should not have permitted Zedner to represent himself at the hearing and reversed the Court's order and remanded the matter for a new hearing.

The Hearing Following Remand

A new hearing was held on July 10, 2000. Zedner's attorney, Tracey Gaffey, called one witness, Sanford L. Drob, the director of psychological assessment at Bellevue

Hospital and the senior psychologist at the Bellevue prison ward. (T 4). The Government did not call any witnesses.

i. Direct Examination

Dr. Drob testified that he administered two tests: the MCMI III test and the Rorschach test. (T 9). According to Dr. Drob, while the MCMI III "did not indicate the presence of a mental illness" or "the presence of a severe psychiatric disturbance," "the results of the Rorschach were suggestive of a serious psychological disorder." (T 10). "I believe Mr. Zedner suffered at the time I examined him from a delusional disorder," Dr. Drob testified. (T 11).

Dr. Drab explained the basis of his belief:

> . . . Mr. Zedner told me, for example, that he was the head of a group of people who were managing all of the money in the Federal Reserve in the United States. That he was a member of the Masonic Order and that he was entrusted with hundreds of billions of dollars to manage, although he claimed he wasn't making a dime off of any of this. . . .
>
> Some of Mr. Zedner's other interests, his interests in numerology and mysticism[,] are typical of individuals who might have delusional disorders. . . . Given the psychological test results, it leads me to believe with a high degree of clinical certainty that at the time I saw him, that his statements about his virtually unlimited power over the United States Federal Reserve system[] are the product of a delusional disorder.

(T 12-13).

Dr. Drob went on to testify that a delusion "is a radically false fixed belief" and that there were two types of delusions: "bizarre delusions and non-bizarre delusions." (T 14). Dr. Drob compared the two types:

> As an example of a bizarre delusion, I had a patient a year ago [] who believed that he was impregnated by an alien and that he was carrying the baby of an alien, but that baby was also a clock and that he could hear it ticking. It is bizarre. It just doesn't make sense.
>
> An example of a non-bizarre delusion would be that a person believes that his spouse is having affairs with all of the men in his office. She's not having those affairs, it is clear to everyone that she isn't, but he believes that that is happening. It is non-bizarre because it could happen in reality.
>
> Now there are many delusions that are hard to categorize as to being either bizarre or non-bizarre. If one believes that one is controlling all of the wealth of the United States, it is sort of on the border. It is kind of bizarre.

(T 14-15). Nevertheless, Dr. Drob stated that it was his opinion that Zedner was competent to stand trial. Dr. Drob testified:

> I believe that Mr. Zedner [] understands the functioning of everybody here in the courtroom. I believe that he understands the charges against him. And I believe that he's able to sit down and have a rational conversation with his attorney, with one possible exception. Which is how to proceed with his defense.
>
> . . .

> . . . I don't see an alternative defense other that he was either, you know, not mentally competent at the time when he did this, or that because of his mental problems, he didn't – never believed that they were – I don't know.

(T 20-22).

ii. Cross-Examination

To demonstrate that Zedner's delusions were bizarre and that Zedner was incompetent, the Government elicited the following:

> Q. . . . [W]hen [Mr. Zedner] told you that he was part of some organization that runs the Federal Reserve Board, you didn't feel it necessary to contact Alan Greenspan, correct?
>
> A. No, I did not.
>
> Q. In fact, you did not have to do any independent investigation to determine whether Mr. Zedner controlled 50 billion dollars, correct?
>
> A. I did not.

(T 30-31).

> Q. How many people have you heard or read about [] who have fancied themselves the head of the Federal Reserve [S]ystem, chosen by some unnamed group?
>
> A. This is the first time. I believe this is a delusion, there is no doubt in my mind that it's a delusion.

> Q. . . . [I]f [Mr. Zedner] persists in this belief that the bonds are legitimate, that is bad judgment [ ] or is it delusional?
>
> A. It is bad judgment conditioned – caused by his delusion.
>
> Q. Well, . . . is it bad judgment to jump out of a plane without a parachute at 20 thousand feet . . . if you think you can fly, or is [sic] delusional?
>
> A. All other tings [sic] being equal, I would say that that's delusional.
>
> Q. Is there any possibility whatsoever that the bonds that Mr. Zedner is talking about are legitimate?
>
> A. In my mind? No.

(T 36-37).

Although on direct-examination Dr. Drob stated that he was not "terribly optimistic" that Zedner could be treated for his delusions, (T 18), when asked on cross-examination that not "terribly optimistic" left open the possibility that he could be treated, Dr. Drob responded, "Yes, definitely. He could be helped, sure." (T 38).

Dr. Drob conceded that Zedner had "waffled a bit on th[e] issue" of whether the bonds were genuine and that there was no way of knowing whether, during the trial, Zedner would revert to his delusion that the bonds were genuine and thereby hurt his defense:

> Q. If Mr. Zedner persists in telling his attorney during the trial . . . these bonds are legitimate and conduct your cross-examinations and direct examinations [to show] that the

bonds are legitimate, is he helping in his defense?

A. At that point, he would be allowing his delusions to get the best of him and be at cross purposes to his defense, in my opinion, as a result of mental illness.

(T 43-44).

Legal Standard

Although "the Government may file a motion for a hearing to determine the mental competency of the defendant," 18 U.S.C. §4241(a), "there [is] no settled view of where the burden of proof should lie," *Medina v. California,* 505 U.S. 437, 447 (1982); *see also United States v. Nichols*, 56 F.3d 403, 410 (2d Cir. 1995) (recognizing that "[t]he federal statute providing for competency hearings does not allocate the burden of proof"). Nevertheless, " 'The allocation of the burden of proof to the defendant [or to the Government] will affect competency determinations only in a narrow class of cases where the evidence . . . that a defendant is competent is just as strong as the evidence that he is incompetent.' " *Nichols,* 56 F.3d at 410 (quoting *Medina,* 505 U.S. at 449).

"In making a finding of competency, the district court may rely on a number of factors, including medical opinion and the court's observation of the defendant's comportment." *Nichols,* 56 F.3d at 411. "The mental illness must deprive the defendant of the ability to consult with his lawyer 'with a reasonable degree of rational understanding' and to understand the proceedings against him rationally as well as factually." *Id.* at 412 (quoting *Dusky v. United States,* 362 U.S. 402, 402 (per curiam) (1960)).

The "district court's finding [will be upheld on appeal] unless clearly erroneous," and "'[w]here there are two permissible views of the evidence as to competency, the court's choice between them cannot be deemed clearly erroneous.'" *Nichols*, 56 F.3d at 411 (quoting *United States v. Villegas*, 899 F.2d 1324, 1341 (2d Cir. 1990)). Thus, if the Court determines that Zedner:

> is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense, the court shall commit the defendant . . . for such a reasonable time, not to exceed four months, as is necessary to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the trial to proceed.

18 U.S.C. § 4241(d).

Argument

According to Zedner, "The government has not shown . . . that Mr. Zedner is incompetent. . . . On the contrary, the evidence shows that he understands the proceedings, is able to assist in his defense, and that his delusions will not interfere with counsel's ability to present a viable 'lack of intent" defense.'" (Br. at 7). "[H]is beliefs about the validity of the bonds . . . and the secret workings of the Federal Reserve Board are 'irrational,' . . . but these beliefs will not interfere with Mr. Zedner's defense. On the contrary, those beliefs *are* the defense. (Br. at 8) (emphasis in original).

Although Zedner fails to come out and say it, his "lack of intent defense" is an insanity defense. What Zedner intends to do at trial is show that at the time he attempted to negotiate the bonds, he insanely believed that the bonds were genuine and that the misspellings on the bonds were part of "the secret workings of the Federal Reserve Board." Given the bonds [sic] facial irregularities, which rendered them as obviously bogus as money used in the board game Monopoly, a standard "lack of intent" defense is unavailable. Zedner is loathe to concede this now, however, which explains why he has not filed a Notice of Insanity Defense as required by Rule 12.2, because such a concession would lend some support to the proposition that he still is insane.

To show that he is now competent, Zedner contends that "[h]e no longer insists upon serving subpoenas on high-level government officials or proving that the bonds in the case are valid." (Br. at 8). Zedner's assurances are not comforting. As Dr. Drob testified, Zedner has "waffled a bit on th[e] issue," and nothing will prevent Zedner from waffling during the trial. Indeed, he is just as delusional now as when he contended that the bonds were legitimate. As Dr. Drob testified, Zedner now fancies himself "the head of a group of people who were managing all of the money in the Federal Reserve in the United States" and that he has been "entrusted with hundreds of billions of dollars to manage." The delusions have changed, but they are still delusions and just as bizarre.

Conclusion

Zedner is still suffering from a mental defect rendering him mentally incompetent to assist properly in his defense. The Court should commit him to the custody of

the Attorney General for treatment in a suitable facility not to exceed four months.

Respectfully submitted,

LORETTA E. LYNCH
United States Attorney

By: /s/ Leonard Lato
Leonard Lato
Assistant U.S. Attorney
Tel: (631) 234-1250
Fax: (631) 234-8725

cc: Tracey L. Eadie Gaffey, Esq.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	
-v-	NOTICE OF MOTION
JACOB ZEDNER,	96 Cr. 285 (TCP)
Defendant.	

PLEASE TAKE NOTICE, that upon the annexed declaration of Edward S. Zas, the accompanying memorandum of law, and all prior proceedings in this matter, defendant Jacob Zedner hereby moves for an order dismissing the indictment with prejudice pursuant to the Speedy Trial Act, 18 U.S.C. § 3161 *et seq.*, and the Speedy Trial Clause of the Sixth Amendment.

Dated: New York, New York
March 5, 2001

Yours, etc.,

LEONARD F. JOY, ESQ.
THE LEGAL AID SOCIETY
FEDERAL DEFENDER DIVISION

By: /s/ Edward S. Zas
EDWARD S. ZAS
Attorney for Defendant
Jacob Zedner
52 Duane Street, 10th Floor
New York, New York 10007
Tel.: (212) 417-8742

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
-v-	:	DECLARATION
JACOB ZEDNER,	:	96 Cr. 285 (TCP)
Defendant.	:	

EDWARD S. ZAS declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I am an attorney with The Legal Aid Society, Federal Defender Division, counsel to defendant Jacob Zedner. I make this declaration in support of Mr. Zedner's motion to dismiss the indictment with prejudice under the Speedy Trial Act and the Speedy Trial Clause of the Sixth Amendment.

2. Mr. Zedner was indicted in this case nearly five years ago, on April 4, 1996. He was charged with seven counts of attempting to defraud financial institutions, in violation of 18 U.S.C. § 1344, and one count of possessing counterfeit obligations of the United States, in violation of 18 U.S.C. § 472. The government contends that, over a one-week period in March of 1996, Mr. Zedner tried to

open accounts at a number of financial institutions by using bearer bonds purported to be issued by the United States. The bonds, on their face, contained a number of obvious spelling errors and other indicia that they could not possibly be real. The banks immediately recognized that the bonds were phony; none of them lost any money.

3. Mr. Zedner was released on bail following his arrest. His bail conditions required him to post a bond in the amount of $500,000, secured by the deeds to two homes. He also has not been permitted to travel outside of the Eastern and Southern Districts of New York, and has been subject to reporting requirements.

4. On October 19, 1998, Mr. Zedner was found incompetent to stand trial. His interlocutory appeal from the order declaring him incompetent was decided on October 1, 1999. The matter was remanded on October 22, 1999, and a new competency hearing was held on July 10, 2000. Mr. Zedner filed his post-hearing memorandum on August 4, 2000. The government filed its post-hearing memorandum on August 11, 2000. The competency motion has been under advisement since that date. Thus, as of this writing, the competency issue has been pending for more than six months.

WHEREFORE, it is respectfully requested that the Court order that the indictment be dismissed with prejudice.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
March 5, 2001

/s/ Edward S. Zas
EDWARD S. ZAS

[Certificate Of Service Omitted In Printing]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	:	
-v-	:	**96 Cr. 285 (TCP)**
JACOB ZEDNER,	:	
Defendant.	:	

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT JACOB ZEDNER'S MOTION TO DISMISS THE INDICTMENT WITH PREJUDICE UNDER THE SPEEDY TRIAL ACT AND THE SPEEDY TRIAL CLAUSE OF THE SIXTH AMENDMENT

Preliminary Statement

Defendant Jacob Zedner respectfully submits this memorandum of law in support of his motion to dismiss the indictment under the Speedy Trial Act of 1974, as amended (the "Act"), 18 U.S.C. § 3161 *et seq.* (2000). The motion should be granted because more than 70 days have elapsed since Mr. Zedner was indicted and he still has not been brought to trial. Moreover, the factors enumerated in the Act and in the case law support dismissal of the indictment with prejudice.

Facts[1]

Mr. Zedner was indicted in this case nearly five years ago, on April 4, 1996. He was charged with seven counts of attempting to defraud financial institutions, in violation of 18 U.S.C. § 1344, and one count of possessing counterfeit obligations of the United States, in violation of 18 U.S.C. § 472. The government contends that, over a one-week period in March of 1996, Mr. Zedner tried to open accounts at a number of financial institutions by using bearer bonds purported to be issued by the United States. The bonds, on their face, contained a number of obvious spelling errors and other indicia that they could not possibly be real. The banks immediately recognized that the bonds were phony; none of them lost any money.

Mr. Zedner was released on bail following his arrest. His bail conditions required him to post a bond in the amount of $500,000, secured by the deeds to two homes. He also has not been permitted to travel outside of the Eastern and Southern Districts of New York, and has been subject to reporting requirements.

On October 19, 1998, Mr. Zedner was found incompetent to stand trial. His interlocutory appeal from the order declaring him incompetent was decided on October 1, 1999. On October 22, 1999, the mandate issued and the matter was remanded. A new competency hearing was held on July 10, 2000. Mr. Zedner filed his post-hearing memorandum on August 4, 2000. The government filed its post-hearing memorandum on August 11, 2000. The competency motion has been under advisement since that

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[1] These facts are taken from the accompanying declaration of Edward S. Zas.

date. Thus, as of this writing, the competency issue has been pending for more than six months.

Argument

I.

THE SPEEDY TRIAL ACT REQUIRES THAT THE INDICTMENT BE DISMISSED WITH PREJUDICE.

A. The Speedy Trial Act Requires Dismissal of the Indictment.

The Speedy Trial Act, 18 U.S.C. §§ 3161-3174 (2000), requires the government to bring a defendant to trial within 70 days of the date he was indicted or his first appearance before a judicial officer, whichever is later. 18 U.S.C. § 3161(c)(1). If this period is exceeded, the Court must dismiss the indictment upon motion of the defendant. 18 U.S.C. § 3162(a)(2). The Court also must decide, after considering the enumerated statutory factors, whether dismissal should be with or without prejudice. 18 U.S.C. § 3162(a)(2).

Mr. Zedner was indicted nearly five years ago, following various preliminary court appearances. He has still not been brought to trial. Accordingly, the indictment must be dismissed.

While the Act excludes certain periods of delay from the speedy trial computation, the mandatory 70-day period has still been exceeded. The Act excludes periods of "delay resulting from any proceeding, including any examinations, to determine the mental competency or physical capacity of the defendant." 18 U.S.C. § 3161(h)(1). Thus, the Act excludes the period between October 22, 1999, the date the Court of Appeals remanded this case for a new

competency hearing, and August 11, 2000, the date the final post-hearing memorandum was filed. The Act also excludes the period while the competency motion has been "under advisement," but only for 30 days. *See* 18 U.S.C. § 3161(h)(1)(J) (excluding "delay reasonably attributable to any period, *not to exceed thirty days*, during which any proceeding concerning the defendant is actually under advisement by the court") (emphasis added).

Here, the competency motion has been "under advisement" since August 11, 2000, the date the government submitted its post-hearing memorandum. *See, e.g., Henderson v. United States*, 476 U.S. 321, 328-29 (1986) (Act "allows exclusion of up to 30 days while the district court has a motion 'under advisement,' *i.e.*, 30 days from the time the court receives all papers it reasonably expects. . . ."); *United States v. Johnson*, 29 F.3d 940, 942-42 (5th Cir. 1994) (matter is considered "under advisement" once court receives all submissions from counsel); *United States v. DiTommaso*, 817 F.2d 201, 209 (2d Cir. 1987) (speedy trial clock began to run 30 days after final post-hearing brief was due); *United States v. Clark*, 807 F.2d 412, 413 & n.2 (5th Cir. 1986) (competency motion was "under advisement" when court "received all of the documents needed to determine competency"). Accordingly, even omitting the periods excluded by the Act, the indictment must be dismissed, because more than 70 days – more than five months – have elapsed since September 11, 2000, which was 30 days after the competency motion was taken under advisement. The government did not seek or

obtain an order excluding any of the time following September 11, 2000, from the speedy trial computation.[2]

B. The Court Should Dismiss the Indictment With Prejudice.

The remaining issue is whether the indictment should be dismissed with prejudice. The Act states that, "in determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense, the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter and on the administration of justice." 18 U.S.C. § 3162(a)(2). In this case, these factors warrant dismissal with prejudice.

1. Seriousness of the Offense.

The first statutory factor, the seriousness of the offense, weighs in favor of dismissal with prejudice. While no federal crime is trivial, Mr. Zedner's alleged offenses, the product of mental illness, are non-violent, caused no harm, and are therefore not as serious as many other federal crimes. *See United States v. Caparella*, 716 F.2d 976, 980 (2d Cir. 1983) (for speedy trial purposes, offense of opening mail without authority was not "a 'serious' crime, absent exacerbating circumstances such as violence;" indictment dismissed with prejudice). *Cf. United States v. Koory*, 20 F.3d 844, 847 (8th Cir. 1994) (possession of

[2] Time periods may not be excluded retroactively for speedy trial purposes. *United States v. Gambino*, 59 F.3d 353, 358 (2d Cir. 1995); *United States v. Tunnessen*, 763 F.2d 74, 77-79 (2d Cir. 1985).

cocaine with intent to distribute within 1,000 feet of an elementary school and related weapons charge were "serious" offenses, warranting dismissal without prejudice); *United States v. Wells*, 893 F.2d 535, 538 (2d Cir. 1990) (charged offense of impersonating federal officer, carrying gun, and claiming official authority to do so was "serious offense").

2. The Circumstances Leading to Dismissal.

The second statutory factor, the "facts and circumstances" leading to dismissal of the indictment, also favors dismissal with prejudice. This inquiry focuses on the cause of the speedy trial violation. Here, Mr. Zedner bears no responsibility for the violation; on the contrary, in his post-hearing memorandum in support of his competency (at pp. 2, 10-11), filed in August of 2000, he requested a trial "as soon as possible." *See United States v. Giambrone*, 920 F.2d 176, 182 (2d Cir. 1990) (affirming dismissal with prejudice where defendant "had at all times indicated his own readiness for trial and had opposed the government's requests for delays"); *United States v. Ramirez*, 973 F.2d 36, 39 (1st Cir. 1992) (dismissal with prejudice proper when delay was not caused by defendant, but resulted from administrative oversight, even though charge "serious").

The government, moreover, has taken no action since the competency hearing in July of 2000, to ensure compliance with the Speedy Trial Act. *See Giambrone*, 920 F.2d at 182 (affirming dismissal with prejudice where "government made no effort to have [two-month period of] time excluded on any basis permissible under the Act" and failed to "convey to the court the fact that there was need

for an expedited trial"); *Caparella*, 716 F.2d at 981 (dismissal with prejudice affirmed despite absence of "evil motive" on the part of government; "[m]eeting established time limitations is important and lack of attention nor dilatoriness in observing them should not be encouraged by courts viewing such neglect tolerantly."); *United States v. Rivas*, 782 F. Supp. 686, 687 (D. Me. 1992) (dismissing case with prejudice where, *inter alia*, prosecutor "failed to ask the Court to bring the case forward to trial on an expeditious basis in conformity with the requirements of the Act."), *aff'd*, 973 F.2d 36 (1st Cir. 1992).[3] By arguing against Zedner's competency, and thereby opposing his request in August for a prompt trial, and by failing to remind the Court of the speedy trial requirements, the government bears some responsibility for the violation in this case. *See Giambrone*, 920 F.2d at 180-82; *United States v. Russo*, 741 F.2d 1264, 1267-68 (11th Cir. 1984) (dismissal with prejudice warranted where ignorance or negligence led to government's failure to prosecute).

3. Administrative Concerns.

The administration of the Act and of justice also support dismissal with prejudice. Mr. Zedner's alleged offenses were not the product of criminal intent, but of mental illness. Additionally, he has lived under the stress and cloud of a federal indictment for almost five years. *See Upton*, 921 F. Supp. at 103 (noting the "prolonged 'anxiety

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[3] "[T]he defendant is not obligated to bring himself to trial. The duty rests upon the state to bring prosecutions to a speedy conclusion." *United States v. Upton*, 921 F. Supp. 100, 103 (E.D.N.Y. 1995) (citing *Barker v. Wingo*, 407 U.S. 514, 528 (1972)), *aff'd*, 78 F.3d 65 (2d Cir. 1996)[.]

and concern' defendants are reasonably expected to endure by virtue of a pending criminal indictment and by the possible impairment of a defendant's ability to mount a defense which a prolonged delay may cause.") (citing *Barker v. Wingo*, 407 U.S. 514 (1972); footnote omitted). And, as a result of his bail conditions, his liberty has been impinged and his life disrupted for this substantial period of time. *See United States v. Giambrone*, 920 F.2d 176, 180-81 (2d Cir. 1990) (affirming dismissal with prejudice; "whether [the defendant] is free on bail or not, . . . [the delay] may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and his friends") (citations omitted). Under these circumstances, the effect of allowing the government to re-indict Mr. Zedner would be severe. "'Reprosecution in this case would send exactly the wrong signal to those responsible for complying with the Act's requirements and would, in all likelihood, foster in [the] future a cavalier regard, if not a concerted disregard of those requirements.'" *Rivas*, 973 F.2d at 39 (quoting district court opinion). As the Second Circuit has noted, "we view a violation of *any* of the Act's time limitations as negatively impacting on the administration of the Act." *Caparella*, 716 F.2d at 981 (emphasis added).

4. Other Factors.

In addition to the three factors explicitly mentioned in the Act, other factors – the length of the delay in this case and the ensuing prejudice to Mr. Zedner – counsel in favor of dismissal with prejudice.

There is "little doubt" that Congress intended prejudice to the defendant to be a relevant factor for the Court to consider in making its determination of whether to dismiss with prejudice. *United States v. Taylor*, 487 U.S. 326, 334 (1988). *Accord*, *United States v. Upton*, 921 F. Supp. 100, 104 (E.D.N.Y. 1995), *aff'd*, 78 F.3d 65 (2d Cir. 1996). Here, the half-decade that has elapsed since the indictment was filed will inevitably hamper Mr. Zedner's ability to defend himself at trial. The central issue at a trial would concern his mental state at the time of his conduct in March of 1996. It will be difficult, given the passage of five years, changed circumstances, potential lapses in memory, and the possible disappearance of witnesses, to establish what his mental condition was like that long ago. *Cf. Pate v. Robinson*, 383 U.S. 375, 387 (1966) (noting the "difficulty of retrospectively determining an accused's competence to stand trial" six years earlier); *Dusky v. United States*, 362 U.S. 402, 403 (1960) (citing the "difficulties of retrospectively determining the petitioner's competency as of more than a year ago").

Courts have dismissed indictments with prejudice in circumstances where the speedy trial violation was less egregious than it is here. *See, e.g.*, *Giambrone*, 920 F.2d at 181 (affirming dismissal with prejudice where Act's 70-day period was exceeded by only 20 days and defendant had been left "in the disadvantageous position of an indicted but untried defendant for more than a year"). As Judge Glasser has noted in dismissing an indictment with prejudice, "The prolonged delays in this case are the targets at which the Speedy Trial Act was clearly aimed and weighs heavily in the balance as does the adverse effect those prolonged delays must inevitably have upon

the presentation of a meaningful defense." *Upton*, 921 F. Supp. at 105.

In short, to allow the government to re-indict in these circumstances would "undermine the integrity of the Act and the principles it was intended to protect." *United States v. Angelini*, 553 F. Supp. 367, 371 (D. Mass. 1982) (dismissing indictment with prejudice where Act was violated).

II.

THE SPEEDY TRIAL CLAUSE OF THE SIXTH AMENDMENT REQUIRES THAT THE INDICTMENT BE DISMISSED WITH PREJUDICE

Dismissal with prejudice is also required by the Speedy Trial Clause of the Sixth Amendment. By dismissing the indictment with prejudice pursuant to the speedy trial statute, however, *see supra* Point I, the Court need not reach the constitutional aspects of the speedy trial violation here.

In *Barker v. Wingo*, 407 U.S. 514 (1972), the Supreme Court announced a four-part test for evaluating constitutional speedy trial claims. This test balances (1) the length of the delay; (2) the reason for the delay; (3) whether and how the defendant asserted the speedy trial right; and, (4) the prejudice to the defendant. *Id.* at 530-33.

Under the first prong of the *Barker* test, the delay is measured from the date the defendant was indicted or arrested, whichever is earlier. *See Redd v. Sowders*, 809 F.2d 1266, 1269 (6th Cir. 1987). Here, that period is five years. This extensive delay creates a strong presumption of prejudice to Mr. Zedner that must be weighed against

the other *Barker* criteria. Indeed, most courts hold that even a one-year delay is presumptively prejudicial. *See, e.g., United States v. Henson*, 945 F.2d 430, 437 (1st Cir. 1991) (9½-month delay); *Wells v. Peacock*, 941 F.2d 253, 257-58 (3d Cir. 1991[])] (217-day delay); *United States v. Grimmond*, 137 F.3d 823, 828 (4th Cir. 1998) (35-month delay is "uncommonly long and thus presumptively prejudicial"); *United States v. Jernigan*, 20 F.3d 621, 622 (5th Cir. 1994) (three-year delay); *United States v. Walker*, 92 F.3d 714, 717 (8th Cir. 1996) (37-month delay; delay approaching one year presumptively prejudicial).

The second *Barker* factor, the cause of delay, has been discussed above. As with the speedy trial statute, the Speedy Trial Clause of the Constitution does not require the defendant to show bad faith or intentional delay on the part of the government. Rather, delays caused by simple negligence or crowded calendars may also be considered. *See Barker*, 407 U.S. at 531.

The third *Barker* criterion focuses on whether and how the defendant asserted his speedy trial right. A vigorous and timely assertion of the right enhances a Sixth Amendment speedy trial claim. *Id.* at 530-32. Mr. Zedner's request for a prompt trial in August of 2000 qualifies as such an assertion. *See Redd v. Sowders*, 809 F.2d 1266, 1271 (6th Cir. 1987) (defendant's single demand for a speedy trial and reduction in bail was sufficient assertion of speedy trial right); *United States v. Padilla*, 819 F.2d 952, 963 (10th Cir. 1987) (letter to federal magistrate judge seeking to have federal charges addressed constituted demand for speedy trial).

Finally, the remaining *Barker* factor considers prejudice to the defendant, such as (1) oppressive pre-trial

restrictions on liberty; (2) anxiety and concern; and (3) impairment of the defense. 407 U.S. at 530-33. The third type of prejudice is the most important because the inability to prepare a defense "skews the fairness" of the judicial process. *Id.* at 532. For the reasons discussed in Point I, *supra*, all of these factors weigh in Mr. Zedner's favor.

Accordingly, the Sixth Amendment requires that the indictment be dismissed with prejudice. *See Upton*, 921 F. Supp. at 103-05.

* * *

In sum, given the law, the facts, and the interests of justice, the Court should bring this stale prosecution to an end by dismissing the indictment with prejudice.

Conclusion

For these reasons, this Court should order that the indictment be dismissed with prejudice.

Dated: New York, New York
March 5, 2001

Respectfully submitted,

LEONARD F. JOY
The Legal Aid Society
Federal Defender Division

By: /s/ Edward S. Zas
EDWARD S. ZAS
Attorney for Defendant
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TRACEY L. EADIE GAFFEY,
Of Counsel.

[Certificate Of Service Omitted In Printing]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES
OF AMERICA,

Plaintiff,

-against-

JACOB ZEDNER,

Defendant.

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MEMORANDUM
AND ORDER

96 Cr. 285 (TCP)

PLATT, District Judge.

Defendant's attorney, Tracey Gaffey of the Federal Defender's Office, has made a Motion to Dismiss the indictment against the defendant for failure of the Court and the Government to give the defendant a speedy trial pursuant to 18 U.S.C. § 3161, completely ignoring or otherwise overlooking the fact that early on in this complex (both medical and multiple witness) litigation, defendant with the advice and assistance of counsel, under oath, waived all of his rights in open court and in a signed writing to a speedy trial for all time (copy of waiver annexed hereto).

Defense counsel will almost certainly argue that speedy trial rights may not, under the Act, be waived, but again she completely ignores or otherwise overlooks the fact that under the Act a defendant may waive his rights to speedy trial by inaction (i.e. by not raising the right prior to the commencement of a trial) 18 U.S.C. § 3162(a)(2), and, hence, most certainly may waive such

rights by affirmative action as he has done voluntarily and under oath, with the advice of counsel, here.

Moreover, defendant, of course, made no such motion on the morning of the date on which the case was called to commence the trial on the merits and may be said to have waive by inaction at that point. 18 U.S.C. § 3162(a)(2). Prior to that date, the defendant, himself, had issued and served some 33 subpoenas on witnesses to appear for the trial on that date. Among the more illustrious of these witnesses were:

U.S. President William Jefferson Clinton
U.S. Attorney General Janet Reno
U.S. Secretary of State Madeline Albright
U.S. Senator Alphonse D'Amato
Chiang Kai-shek
U.S. Treasury Secretary Robert Rubin
U.S. Federal Reserve Chairman Alan Greenspan
National Security Advisory to the White House
Andy Burger [sic: Sandy Berger]

In light of the facts then known to it, instead of selecting a jury from a panel waiting in the courthouse for that purpose, the Court, with the consent and in the presence of present counsel, conducted a competency hearing.

Among other things, the Court was aware of the fact that (i) defendant had been arrested on March 12, 1996, (ii) an indictment had been returned and filed on April 4, 1996, charging defendant with seven counts in a scheme to defraud financial institutions and one count of knowingly possessing counterfeit bonds, (iii) defendant was maintaining that he had no knowledge of the counterfeit nature of the financial instruments in question from the date of his receipt thereof in March 1996 to October 1998 and (iv) that even when advised by a representative of the U.S.

Treasury Department that they were counterfeit he accepted such advice "with reservations."

At the competency hearing, defendant identified two of the counterfeit bonds that were tendered to those institutions named in the first seven counts of the indictment. Each of these bonds were in the face amount of *ten million* dollars. Defendant testified that he received those bonds approximately a week before his arrest via courier from two individuals named "Eagle Chang" and "Tommy Chin" who were located in Taiwan and with whom he had spoken on the telephone, but had never met. According to the defendant, the bonds arrived in connection with an anticipated transfer by these individuals of *three trillion* dollars and a power of attorney to defendant pursuant to arrangements, that were never fully explained.

In earlier statements to Government agents, defendant said that the bonds, which showed a date of issue of 1935, were given to Chiang Kai-shek when he fled to Taiwan during the Communist takeover of mainland China (which occurred in 1949). The bonds purportedly issued by "Ministry of Finance of the USA" contained a number of obvious deficiencies on their face such as "Onited Staes," identical serial numbers and a stated duration of "forevev." One of defendant's several explanations for the misspellings was that they represented a "secret code" used to establish the bond's legitimacy.

Attached to a number of the subpoenas and exhibits given to the Court at the hearing and on prior occasions were copies of the counterfeit notes, bonds and other instruments that defendant repeatedly claimed were authentic, but which bore such inscriptions as (i) "United States of America – THREE HUNDRED MILLION DOLLARS – [drawn on] Huau Bank 1933"; (ii) "The Ministry of

Finance of USA entrusts the Washington Bank of America with responsibility for the issue of US Dollra (sic) Bond to all over the world (sic) since 1935"; and a Federal Reserve Note describing itself as (iii) "Hua Qi Bank Certificate Note [on which] [y]ou can draw one hundred million U.S. dollars from Hua Qi Bankor (sic) the branches In.ine (sic) from Augit 6th October 1949 (sic) . . . [signed] Dhtladelphla Cgicago (sic) Illinois St. Louis Missour (sic) and Thunted States of America Clevesand, Ohio. Auouit (sic) 10, 1949."

It is incomprehensible to this Court how defendant rationally might maintain lack of knowledge as to the counterfeit nature of these instruments for over two years following his arrest by government agents, his indictment by a grand jury, the inscriptions on the instruments, and repeated statements to the contrary by government agents and other institutions.

Attached hereto and made a part hereof is a copy of the Court's written Memorandum and Order dated October 19th summarizing what happened at the competency hearing.

Defendant appealed and the Second Circuit reversed, accepting a misleading misrepresentation by another member of the Federal Defender's Office, stating that the Court had held a competency hearing and erred by allowing defendant to proceed pro se at the competency hearing without ever having determined defendant's competency to make a knowing and intelligent waiver of the right to representation by counsel. The fact is, however, that defendant was represented by counsel who immediately, prior to the hearing, advised the Court that defendant proposed to conduct the entire trial by himself (opening,

cross examination, direct and summation) without the assistance of counsel. At that point, the Court insisted that the defendant must have counsel (if only in an advisory capacity) throughout the proceedings and the trial. The Court of Appeals said Ms. Tracey Gaffey did not ask or object to a single question. That is true, but she did not do so because she was obviously told by her client not to do so.

Ms. Tracy Gaffey is a highly competent counsel. The defendant had repeatedly said in prior proceedings he did not want Ms. Gaffey or any other lawyer to represent him; indeed, he did not want her to be in court with him. Only by reason of this Court's insistence was she permitted to remain and to represent him as she did.

Among defendants [sic] parting words to the Court after the hearing were an admonition to the Court that defendant wanted all of the subpoena recipients, including the "illustrious ones" named above, to appear for his trial.

Nonetheless, following the Second Circuit's Opinion on October 1, 1999, the Court held a second competency hearing on July 10, 2000, at which Ms. Gaffey called Sanford L. Drob, (not a psychiatrist but) the director of psychological assessment at Bellevue Hospital and the senior psychologist at the Bellevue prison ward. Dr. Drob testified that while his tests did not indicate the presence of a mental illness or the presence of a severe psychiatric disturbance, they were "suggestive of a serious psychological disorder," that he believed that he suffered from a "delusional disorder," and that there were two types of delusions, bizarre delusions and non-bizarre delusions.

On cross examination Dr. Drob conceded that it was not necessary for him to communicate with Alan Greenspan to

determine whether or not Mr. Zedner was (as he claimed to be) part of an organization that ran the Federal Reserve Board; that it was not necessary for him to conduct an independent investigation to determine whether Mr. Zedner (as he claimed) controlled fifty million dollars in bonds; that he (Dr. Drob) had never theretofore heard or read about a person who fancied himself as the head of the Federal Reserve System; that in his mind there was no possibility whatsoever that the bonds that Mr. Zedner was talking about were legitimate and that he (Dr. Drob) was not "terribly optimistic" that Mr. Zedner could be treated for his delusions but there was a possibility that he could be helped.

The law apparently still is that a "District Court's finding will be upheld unless clearly erroneous" and "where there are two permissible views of the evidence as to competency, the Court's choice between them cannot [sic] be deemed fairly erroneous." *United States v. Nichols*, 56 F.3d 403, 410 (2d Cir. 1995).

This Court, of course, is neither a psychiatrist nor a psychologist, but good old fashioned "common sense" tells this Court that it is not normal[:]

1. To receive via courier from two individuals named Earl Chang and Tommy Chin located in Taiwan with whom one had spoken but had never met, bonds with a face amount of Ten million dollars to be followed by Three trillion dollars worth of bonds and a power of attorney.

2. That legitimate bonds would show that a date of issue of 1935 which were issued by

the "Ministry of Finance of USA" and contained obvious deficiencies on their face such as "Onited Staes," identical serial numbers with a stated duration of "forevev."

3. That the obvious misspellings were a "secret code" "used to establish the bonds' legitimacy."

4. A normal person carried an identification card which said "United Nations, New York affiliate 06 December 1997, Number 1010233."

5. This "was an international security matter."

6. The individual was doing the United States a favor as "his job was to bring the money to the United States for investment."

7. That he used the name of John Davidson because it was "related to his sensitive work and when you're dealing with the Russians and Chinese its very sensitive work."

8. That the notes, bonds and other instruments claimed to be authentic bore inscriptions as (a) United States of America – THREE HUNDRED MILLION DOLLARS – [drawn on] Huau Qi Bank 1933, (b) "The Ministry of Finance of USA entrusts the Washington Bank of America with responsibility fo [sic] the issue of US Dollra (sic) Bond to all over the world (sic) since 1935," and (c) a federal reserve note describing itself as "Hua Qi Bank Certificate Note [on which] [y]ou can draw one million U.S. dollars from Hua Qi Bankor (sic) the branches In.ine (sic) from Augit [sic] 6th October 1949 (sic) . . . 9signed] Dhtladelphla [sic] Cgicago (sic) Illinois St. Louis Missour (sic) and Thunted [sic] States

> of America Clevesand [sic], Ohio. Auouit (sic) 10, 1949.
>
> 9. He needed the testimony of President Clinton, Attorney General Reno, Secretary of State Allbright, Senator D'Amato, Chiang Kai-shek, Treasury Secretary Rubin, Federal Reserve Chairman Greenspan and National Security Advisor Burger [sic] to explain to a court and jury the secret code and authenticity of the bonds, notes and other instruments.

Good old fashion common sense also tells the undersigned (if no one else) that such thinking is not only delusional, but patently and blatantly bizarre and that one who holds such beliefs must be suffering from a mental disease or defect which renders him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.

Under 18 U.S.C. § 4241(e), the law requires this Court to commit the defendant for such a reasonable time, not to exceed four months, as is necessary to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the trial to proceed.

Accordingly, defendant's motion to dismiss must be and hereby is denied and defendant must appear on March 30, 2001 at 9:30 a.m. for sentencing in accordance with this Memorandum and Order.

SO ORDERED.

/s/ Thomas C. Platt
District Judge, United
States District Court

Dated: Central Islip, New York
March 21, 2001

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
LONG ISLAND OFFICE

★ NOV 06 1996 ★

TIME P.M.
TIME A.M. 11/8/96

WAIVER OF SPEEDY TRIAL RIGHTS [NON CUSTODY CASE] CR-96-985 (TCP) Attachment I

I, JACOB ZEDNER, being duly sworn, depose and say that:

1. I have been advised and fully understand I am entitled to a speedy trial under the Sixth Amendment to the United States Constitution, the Speedy Trial Act of 1974 (18 U.S.C. § 3161 et seq.), the Rules of this Circuit, and the Speedy Trial Plan adopted by this Court.

2. I have been advised and fully understand that this Court is prepared to give me a speedy trial in compliance with the foregoing authorities and commence such trial on November 12, 1996.

3. My counsel and I have requested that I not be given a speedy trial and have stated and represented that I wish to waive my rights to a speedy trial under the Sixth Amendment to the Constitution, under the Speedy Trial Act of 1974 (18 U.S.C. § 3161 et seq.), under the Rules of this Circuit and under the Speedy Trial Plan adopted by this Court.

4. I have been advised and fully understand that if I do so waive my rights to a speedy trial, I also waive any and all rights to make a motion to dismiss the indictment (information) against me for failure of the Court to give me a speedy trial and that I waive all of such rights to a speedy trial and to make such a motion or motions for all time.

5. No promises or threats of any kind have been made to me to induce me to waive my rights to a speedy trial and my rights to move to dismiss.

6. I have not been threatened or coerced by anyone into making such waivers.

7. I am making such waivers voluntarily and of my own free will because I wish to do so and for no other reason.

8. I have discussed my waivers fully with my attorney.

9. I am 42 years of age and I have completed 12 years of school, 2 years of college and 0 years of post graduate work.

10. I have been advised of and fully understand my rights to a speedy trial and my rights to make a motion to dismiss in the event I am not accorded a speedy trial and I hereby waive all such rights and so waive them for all time.

Defendant

Witnessed and approved:

Attorney for Defendant

Subscribed and sworn to before me this 8th day of November, 1996.

Deputy Clerk

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ATTACHMENT II

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES
OF AMERICA,

– against –

JACOB ZEDNER,

Defendant.

----------x

MEMORANDUM
AND ORDER

96-CR-285 (TCP)

PLATT, District Judge:

The government moved pursuant to 18 U.S.C. § 4241(a) for a hearing to determine the mental competency of defendant. On October 14, 1998, this Court held a hearing pursuant to sections 4241(a) and 4247(d) thereon. Under a grant of testimonial immunity, and at his own request, defendant testified at such hearing.

In prior proceedings, defendant stated that he wished to proceed *pro se*. At a conference with defendant's assigned attorney and government counsel immediately prior to the competency hearing, this Court inquired whether defendant wished to conduct any part of the trial himself. Assigned counsel advised that defendant proposed to conduct the entire trial, including opening, closing and direct and cross-examination of all witnesses, without the assistance of counsel.

In preparation for a trial on the merits scheduled to commence on October 14th, defendant himself issued some thirty-three subpoenas to witnesses, many of whom seemed to have little or no information regarding the

issues in this case. The more illustrious of these witnesses included:

U.S. President William Jefferson Clinton
U.S. Attorney General Janet Reno
U.S. Secretary of State Madeline Albright
U.S. Senator Alphonse D'Amato
Mrs. Chaing [sic] Kai-Shek
U.S. Treasury Secretary Robert Rubin
U.S. Federal Reserve Chairman Alan Greenspan
National Security Advisor to the White House
Sandy Burger [sic: Berger]

Furthermore, among defendant's parting words after the hearing was an admonition to the Court that defendant wanted all of the subpoena recipients to appear for his trial. (TR 88).

Defendant was arrested on March 12, 1996. In an indictment returned and filed on April 4, 1996, defendant was charged with seven counts in a scheme to defraud financial institutions and one count of knowingly possessing counterfeit bonds. Defendant maintained that he had no knowledge of the counterfeit nature of the financial instruments in question from the date of his receipt thereof in March 1996, to October 8, 1998, when pursuant to a pre-trial order of this Court, a representative of the U.S. Treasury Department (Domestic Division) so advised him. However, defendant indicated that while he accepted this advice, he did so "with reservations."

At the competency hearing, defendant identified two of the counterfeit bonds that were tendered to those institutions named in the first seven counts of the indictment. Each of these bonds was in the face amount of ten-million ($10,000,000.00) dollars. Defendant testified that he received these bonds approximately a week before his

arrest via courier from two individuals named "Eagle Chang" and "Tommy Chin," who were located in Taiwan and with whom he had spoken on the telephone but had never met. According to defendant, the bonds arrived in connection with an anticipated transfer by these individuals of three-trillion ($3,000,000,000.00) dollars and a power of attorney to defendant pursuant to an arrangement that was never fully explained.

In earlier statements to government agents, defendant said that the bonds, which showed a date of issue of 1935, were given to Chaing [sic] Kai-Shek when he fled to Taiwan during the communist takeover of mainland China [which occurred in 1949]. The bonds, purportedly issued by "the Ministry of Finance of USA," contained a number of obvious deficiencies on their face, such as "onited staes," identical serial numbers and a stated duration of "forevev." One of defendant's several explanations for the misspellings was that they represented a "secret code" used to establish the bonds' legitimacy.

As indicated above, from the date of his arrest to October 8, 1998, defendant repeatedly and consistently claimed that the bonds were authentic and valid negotiable instruments. At his competency hearing on October 14, 1998, defendant claimed that he became aware of and accepted the bonds' lack of authenticity "with reservations" through his discussion with the U.S. Treasury representative on October 8, 1998, arranged pursuant to a subpoena. Defendant explained that his "reservations" were based on the fact that the Treasury Department representative was not a "Treasury Department *International*" representative (emphasis added).

On August 8, 1996, defendant arranged for an "expert" from New Jersey who "authenticated" various copies of the bonds, notwithstanding the fact that the originals at that point were in the possession of government agents.

The Court ordered a competency exam of defendant in mid-1997 and received a report from Dr. Naomi Goldstein dated August 5, 1997, based on an hour-and-a-half interview conducted on July 15, 1997. While much of the above information was not available to Dr. Goldstein, nonetheless she reported among other things that:

> (a) when we started to talk, he volunteered that he could not go public at a trial with this case because it contained so many sensitive issues;
>
> (b) he produced an identification card with a photograph. The card said "United Nations, New York affiliate, 06 December 1997, #1010233";
>
> (c) he explained in a number of different ways how he came to be in possession of the bond and stated that he was given a power of attorney by a court in China to negotiate the bond;
>
> (d) he states that he was charged with a fraudulent document and that he was allegedly going to "get money" for himself;
>
> . . . .
>
> (e) he explained that his first attorney had resigned when he tried to subpoena a series of people from the International Monetary Fund;
>
> (f) he states that people were sent to "calm him down" in court;

(g) he claimed that this "was an international security matter and a very delicate matter";

. . . .

(h) he feels he did the United States a favor, "did great things for America," as "his job was to bring the money to the United States for investment"; and

(i) he states that his use of the name John Davidson "was related to his sensitive work, and 'when your [sic] dealing with the Russians and Chinese . . . it's very sensitive work.'"

While concluding that defendant was competent to understand the charges and proceedings and was able to cooperate in his own defense, Dr. Goldstein said that "without additional history, it would be impossible to make a psychiatric diagnosis . . . [but that at that time] there is no evidence of a major mental illness." Nonetheless she asserted that the "prognosis is difficult to assess."

At defendant's competency hearing on October 14, 1998, the Court was informed that Dr. Goldstein has since retired.

At the outset of defendant's hearing, defendant presented to the Court with [sic] a written opinion of Robert Daley, a psychologist, dated May 14, 1997, who concluded on the basis of a conversation with defendant, and apparently without any of the foregoing background information, that defendant was competent.

Attached to a number of the subpoenas and exhibits given to the Court at the hearing and on prior occasions were copies of the counterfeit notes, bonds and other instruments that defendant repeatedly claimed were

authentic, but which bore such inscriptions as (i) "United States of America – THREE HUNDRED MILLION DOLLARS – [drawn on] Huau Bank 1933"; (ii) "The Ministry of Finance of USA entrusts the Washington Bank of America with responsibility for the issue of US Dollra (sic) Bond to all over the world (sic) since 1935"; and a Federal Reserve Note describing itself as (iii) "Hua Qi Bank Certificate Note [on which] [y]ou can draw one hundred million U.S. dollars from Hua Qi Bankor (sic) the branches In.ine (sic) from Augit 6th October 1949 (sic) . . . [signed] Dhtladelphla Cgicago (sic) Illinois St. Louis Missour (sic) and Thunted States of America Clevesand, Ohio. Auouit (sic) 10, 1949." It is incomprehensible to this Court how defendant rationally might maintain lack of knowledge as to the counterfeit nature of these instruments for over two years following his arrest by government agents, his indictment by a grand jury, the inscriptions on the instruments, and repeated statements to the contrary by government agents and other institutions.

Dr. Goldstein's admonition in 1977 [sic: 1997] that "without additional history" (some of which is now available as indicated above) "a psychiatric diagnosis is impossible" and that the prognosis is "difficult to assess," together with all of the foregoing and the Court's several personal observations of defendant over the past several years have led it to conclude that defendant presently is suffering from a mental disease or defect rendering him mentally incompetent to the extent that defendant is unable to understand the nature and consequences of the proceedings against him and to assist properly in his defense. Thus, a thorough and extensive psychiatric examination of defendant is essential. For that reason, the Court is ordering that he be committed to the custody of

the Attorney General for hospitalization and treatment in a suitable facility pursuant to 18 U.S.C. § 4241(d).

SO ORDERED.

/s/ Thomas C. Platt
Thomas C. Platt, U.S.D.C.

Dated: Uniondale, New York
October 19, 1998

U.S. Department of Justice

[SEAL] *United States Attorney*
Eastern District of New York

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United States Attorney's Office
610 Federal Plaza
Central Islip, New York 11722-4454

March 22, 2001

The Honorable Thomas C. Platt
United States District Judge
Eastern District of New York
1044 Federal Plaza
Central Islip, NY 11722

Re: United States v. Jacob Zedner
CR 96-285 (TCP)

Dear Judge Platt:

The Government submits this letter in opposition to Jacob Zedner's motion to dismiss the indictment with prejudice.

FACTS

On April 16, 1996, following Zedner's earlier arrest and release on bond, the Court arraigned Zedner on an indictment charging him with possessing counterfeit U.S. Treasury bonds and attempting to use the bonds to defraud financial institutions. The Court subsequently conducted two status conferences: one on June 7, 1996, at which Zedner's then-attorney, James Hagney, failed to appear, and one on June 21, 1996, at which Zedner failed to appear. The Court entered an order of excludable delay

until the status conference of June 26, 1996. (DSE 5 & 9, 11-14).[1]

At the June 26th conference, Zedner stated that he needed to review documents in Washington, D.C. The parties then agreed, and the Court so declared, that the case was complex, and the Court entered an order of excludable delay through September 6, 1996. At the September 6th conference, however, the case was again adjourned, this time with an order of excludable delay until November 8, 1996. (DSE 15-16, 19-20).

At the November 8th conference, Zedner executed a "waiver of speedy trial for all time," and the Court entered a corresponding order of excludable delay. (DSE 21-23).

At the conference held on January 31, 1997, the Government stated that it was ready for trial. Zedner stated that he was not ready, so the Court postponed jury selection and trial until May 5, 1997. (DSE 25-26).

On the eve of trial – Friday, May 2, 1997 – the Court held a status conference and, at Zedner's request, relieved Mr. Hagney and appointed Tracy Gaffey in an advisory capacity. Concerned about Zedner's mental competence to stand trial – Zedner contended that the Treasury bonds were genuine, notwithstanding that they contained misspelled words – the Court ordered the Government to make arrangements to have Dr. Naomi Goldstein, a psychiatrist, to [sic] examine Zedner. (DSE 26).

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[1] Parenthetical references to "DSE" are to entries on the docket sheet, a copy of which is attached.

The Court conducted a status conference on May 16, 1997. At the conference, the Court appointed Ms. Gaffey to represent Zedner in a full capacity, and the Court adjourned the trial date pending a report from Dr. Goldstein. (DSE 28).

On August 7, 1997, the Court received Dr. Goldstein's report. In Dr. Goldstein's opinion, Zedner was competent to stand trial. (DSE 29).

At a status conference held on September 8, 1997, Zedner complained about his "Legal Aid attorney" (presumably Ms. Gaffey). The Court granted his request to proceed pro se with a Legal Aid attorney assisting in an advisory capacity to help him prepare subpoenas for, among other persons, then-President Clinton and then-Attorney General Reno. The Court issued the subpoenas Zedner had requested, but nearly all of the recipients of the subpoenas moved to quash them. The Court referred the motion to a magistrate judge. (DSE 30, 35 & 46).

On October 20, 1997, in what was perhaps his most bizarre act to date, Zedner moved to dismiss the indictment on the grounds that the Government had violated his civil rights and that the Government agents who had investigated him were guilty of treason and conspiracy. (DSE 47-49).

The Court conducted status conferences on December 16, 1997, and December 17, 1997. At the December 17th conference, the Court scheduled jury selection and trial for February 17, 1998. But at the status conference of January 30, 1998, the Court, at Zedner's request, adjourned the trial date to permit him to serve additional subpoenas on, among other fictitious entities, "The Treasury Department of Treasury International Corporation." Shortly thereafter,

Zedner filed a letter requesting a hearing on what he contended was a national security matter: the failure of the Board of Governors of the Federal Reserve System to admit that it possessed papers concerning some sort of trust in which Zedner maintained an interest. (DSE 68-70, 75-76).

Zedner continued to file bizarre motions and request subpoenas for entities that either did not exist or did not possess information relevant to his outrageous claim that the Treasury bonds, each of which had a face value of $10 million, were genuine. Nearly all of the status conferences revolved around these requests. (*See* DSE 78, 80, 83, 86-93, 95-98).

On October 8, 1998, the Court conducted a hearing concerning the subpoenas Zedner had served on a representative from the Treasury Department and on employees of various financial institutions. Following the hearing, the Court scheduled jury selection and trial for October 14, 1998. (DSE 100).

On October 14, 1998, with a jury panel called and waiting, the Court conferred with counsel over the Court's continued concern over Zedner's competency. The Court dismissed the panel and ordered the Attorney General to take custody of Zedner for the purpose of determining whether he was mentally competent to stand trial. The Court stayed its order, however, to allow Zedner to appeal. (DSE 101, 107-08).

Zedner filed a notice of appeal and, by order dated October 26, 1999, the Court of Appeals vacated the Court's order and remanded the case for a new competency hearing. The Court of Appeals held that this Court should not

have permitted Zedner to proceed pro se at the competency hearing. (DSE 109, 116).

Although the Court attempted to conduct a status conference on April 4, 2000, only the Government appeared on that date. The conference was rescheduled for April 27, 2000. On that date, Ms. Gaffey and Edward Zas, the author of Zedner's brief to the Court of Appeals, were present. The Court set the matter down for a new competency hearing on July 10, 2000. (DSE 119-20).

The competency hearing was held on July 10th. Following the hearing, the Court invited the parties to submit briefs by August 11, 2000. The briefs were timely filed. Even though Ms. Gaffey represented Zedner at the hearing and filed a post-hearing brief in his behalf, Zedner filed a post-deadline, pro se brief on August 23, 2000. (DSE 121 & 124-125).

On March 7, 2001, Zedner, through Mr. Zas, filed a motion to dismiss the indictment, with prejudice, on the ground that Zedner's speedy trial rights had been violated. (DSE 126-27). Although the job of preparing the motion normally would have fallen to Ms. Gaffey, Mr. Zas prepared the brief because, as set forth in the accompanying affirmation of Leonard Lato, Ms. Gaffey had been unavailable since in or about late November 2000.

ARGUMENT

According to Zedner, "the indictment must be dismissed" on speedy trial grounds because he "was indicted nearly five years ago" and "has still not been brought to trial." (Br. at 3).

1. Alleged Speedy Trial Violation

Zedner's motion is not only frivolous, but it borders on bad faith. Mr. Zas, the motion's author, reviewed or should have reviewed the docket sheet in this case. He therefore knows or should know that at every court appearance from arraignment until the status conference of November 8, 1996, the Court entered an order of excludable delay. He knows or should know that on November 8th, Zedner executed a waiver of speedy trial for all time, making further orders of excludable delay unnecessary. He knows or should know that on January 31, 1996, the Government stated that it was ready for trial, while Zedner stated that he was not ready. Mr. Zas knows or should know that on the eve of the first scheduled trial date of May 5, 1997, Zedner asked the Court to relieve his then-attorney, James Hagney. Mr. Zas knows or should know all of these things, yet in his brief he mentions none of them.

Zedner's waiver does not prohibit the Court, on its own motion, from finding a speedy trial violation. In the Government's view, however, it does eliminate Zedner's right to make such a motion. If Mr. Zas has a different view, he should say so and give his rationale rather than pretend that a potentially dispositive issue does not exist.

2. Dismissal With or Without Prejudice

According to Mr. Zas, the indictment should be dismissed with prejudice because the factors the Court must consider in deciding the issue all "warrant dismissal with prejudice." (Br. at 5).

In calling for a dismissal with prejudice, Mr. Zas demonstrates that his apparent bad faith is not limited to the procedural history of this case, but extends to a distortion of

the facts, an attempt to distance himself from his earlier positions and a reliance on appellate cases that do not support his arguments.

It is well-settled that "[i]f a criminal defendant is not brought to trial within 70 non-excluded days from the filing of an indictment, the mandatory remedy provided by the [Speedy Trial] Act is dismissal of the indictment on motion of the defendant." *United States v. Gambino*, 59 F.3d 353, 362 (2d Cir. 1995).

If dismissal is required, "the court may, within its discretion, dismiss the case without prejudice." *Id.* In deciding whether dismissal is to be with or without prejudice, the court must consider three statutory factors: "'the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of th[e Speedy Trial Act] and on the administration of justice.'" *Id.* (quoting 18 U.S.C. § 3162(a)(2)). The Court should also consider whether the defendant has suffered any prejudice. *United States v. Wilson*, 11 F.3d 346, 352 (2d Cir. 1993).

Contrary to Mr. Zas's contentions, the crime with which Zedner is charged is serious, the delay is understandable, and reprosecution would have no adverse impact on either the administration of the Speedy Trial Act or on the administration of justice.

A. Seriousness of the Offenses

According to Mr. Zas, "[W]hile no federal crime is trivial, Mr. Zedner's alleged offenses, *the product of mental illness*, are non-violent, caused no harm, and are therefore not as serious as many other federal crimes" (emphasis

added). (Br. at 5). Mr. Zas's claim that Zedner's alleged crimes were the product of a mental illness is shocking. At each of the competency proceedings, Zedner and his attorneys have maintained that Zedner does not suffer from a mental illness. Should this Court rule, once again, that Zedner is mentally unfit, Mr. Zas will no doubt argue to the Court of Appeals, as he did before, that this Court's ruling should be reversed. As for Mr. Zas's reliance on *United States v. Caparella*, 716 F.2d 976, 980 (2d Cir. 1983), which Mr. Zas contends is a case similar in its lack of seriousness to Zedner's, Mr. Zas fails to point out that whereas the defendant in *Caparella* was accused of a single act of mail theft, "the lowest order of felony," *id.* at 977, 980, Zedner stands accused of, among other things, repeated attempts to defraud financial institutions with bogus Treasury bonds having a face value of $10 million, a Class B felony punishable by up to 30 years' imprisonment on each count, *see* 18 U.S.C. §§ 1344 and 3559(a)(2). The offenses are serious.

B. Facts and Circumstances Leading to Dismissal

In complete disregard of the procedural history of this case, Mr. Zas claims that "Zedner bears no responsibility for the [speedy trial] violation [and,] on the contrary, in his post-hearing memorandum in support of his competency[,] . . . requested a trial 'as soon as possible.'" Mr. Zas even goes so far as to cite *United States v. Giambrone*, 920 F.2d 176 (2d Cir. 1990), where the defendant "had at all times indicated his own readiness for trial and had opposed the government's requests for delays," *id.* at 182.

As set forth above, when the Government stated that it was ready for trial on January 31, 1997, Zedner replied

that he needed an adjournment. When the Government was ready to try the case on May 5, 1997, Zedner, at the last minute, asked the Court to dismiss his attorney. At the status conference held on December 17, 1997, Zedner asked the Court to adjourn the trial date of January 30, 1998. It was not until October 14, 1998, with a jury panel waiting, that the Court, unable to fathom how Zedner intended to defend himself at trial with the absurd defense that bonds containing misspelled words were genuine, ordered Zedner committed to the custody of the Attorney General for a competency examination.

Zedner's post-hearing memorandum in August 2000, in which he asked for a speedy trial, was the first such request Zedner had ever made, and Mr. Zas knows full well that had the Court ordered Zedner to undergo a new psychiatric evaluation, Zedner would have appealed, which would have further delayed the trial. Mr. Zas is also aware that Zedner's counsel, Tracey Gaffey, was having a high-risk pregnancy and was unable to try the case at any time after late November 2000. No one but Zedner has been responsible for the delay.

C. Impact of Reprosecution

According to Mr. Zas, "administrative concerns" and "other factors" call for dismissal with prejudice because "Zedner's alleged offenses were not the product of criminal intent, but of mental illness," and, "as a result of his bail conditions, his liberty has been impinged and his life disrupted" for a "half-decade." (Br. at 8-9). Once again, Mr. Zas contends that Mr. Zedner's crimes were borne of a mental illness. Once again, he ignores the position of mental fitness Zedner maintained at the two competency hearings. Once again, Mr. Zas complains about the five-year

"delay" since Mr. Zedner's arraignment on the indictment, even though the Government has been ready for trial for years and that the only reasons for the delay have been Zedner's requests for delays and Zedner's borderline insanity.

As the Second Circuit stated in *United States v. Simmons*, 786 F.2d 479, 485 (2d Cir. 1986), "[W]here the violation of the Act was unintentional and the resulting delay was not overly long, and where [the defendant] has not presented evidence of prejudice, [there is no reason to] believe that the administration of justice would be adversely affected by reprosecution." Because Zedner has been charged with having committed serious crimes and has not suffered any prejudice, the administration of justice would not be adversely affected if, following dismissal, he were re-indicted.

CONCLUSION

Zedner has waived his right to make this motion. Nevertheless, if the Court, out of an abundance of caution, dismisses the indictment, the dismissal should be without prejudice.

Respectfully submitted,

LORETTA E. LYNCH
United States Attorney

By: /s/ Leonard Lato
Leonard Lato
Assistant U.S. Attorney
Tel: (631) 715-7844
Fax: (631) 715-7922

[Indication Of Service Omitted]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES
OF AMERICA,

-against-

JACOB ZEDNER,

Defendant.

----------X

AFFIRMATION

CR 96-285 (TCP)

LEONARD LATO, an Assistant U.S. Attorney for the Eastern District of New York, states as follows:

1. At all times, I have been the Assistant U.S. Attorney assigned to the captioned case.

2. In late November 2000, Randi Chavis, Esq., an attorney with the Federal Defender Division, informed me that Ms. Gaffey would be out of the office for a few weeks for reasons related to her pregnancy.

3. In late December 2000 or early January 2001, either Ms. Chavis or Ms. Gaffey, or both, informed me that Ms. Gaffey was unlikely to return until some time after Ms. Gaffey gave birth.

4. In or about late January 2001 or early February 2001, I had a telephone conversation with Ms. Gaffey. We discussed the cases we had together, including Zedner. Ms. Gaffey and I agreed that the only case that required attention was that of Anthony Allen, a case assigned to Judge Wexler.

5. At no time did I receive any information from the Federal Defender Division that Zedner desired a speedy trial or that substitute counsel was available to try the case in Ms. Gaffey's absence.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: Central Islip, New York
March 22, 2001

/s/ Leonard Lato
LEONARD LATO
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA,	CR 96-285
v.	United States Courthouse Central Islip, New York
JACOB ZEDNER,	March 30, 2001 9:30 o'clock a.m.
Defendant.	

----------X

TRANSCRIPT OF MOTION
BEFORE THE HONORABLE THOMAS C. PLATT
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:	LORETTA E. LYNCH United States Attorney One Pierrepont Plaza Brooklyn, N.Y. 11201 By: LEONARD LATO, ESQ. Assistant U.S. Attorney
For the Defendant:	THE LEGAL AID SOCIETY FEDERAL DEFENDER DIVISION 52 Duane Street, 10t [sic] Fl. New York, N.Y. 10007 By: EDWARD ZAS, ESQ.
Court Reporter:	Owen M. Wicker, RPR 1180 Federal Plaza Central Islip, N.Y. 11722 (631) 712-6102

Proceedings recorded by mechanical stenography; transcript produced by computer transcription.

[2] (Case called.)

MR. LATO: For the government, Leonard Lato. Good morning, your Honor.

MR. ZAS: For the defendant Jacob Zedner, Edward Zas, your Honor.

THE COURT: I have of [sic] a stay issued from a judge from the court of appeals. From my memo, there is no judgment entered yet pursuant to that, but they may have jurisdiction of this case and of course I will not interfere.

I want to do certain things, though. One, the record should show that Mr. Zas is an appellate attorney. When he last appeared in this Court, as I recall it, he said he did not know how to try a case and did not know how to try this case. The case was assigned by the Legal Aid to Tracey Gaffey who has recently become a mother of a young girl – both sides doing very well – she's not in a position to proceed at the moment. I did issue a memo.

At one point, Ms. Gaffey, as I recall it, agreed there should be a further study of Mr. Zedner and that was the reason we issued the original order. Then we had the competency hearing and it had been my intention at this point to invoke not a four-month or permanent study of him, but pursuant to 4246(b), third sentence, to have him examined for a period of thirty days by a government [3] facility.

As I stated in my memo and order, I'm not a psychiatrist, I'm not a psychologist, nor do I think defense counsel would purport to be such, but I gave the various reasons why I thought we should proceed with caution.

The record should also show that prior to the commencement of the trial on the day of the first competency hearing, defense counsel had served no notice of intention with respect to competency or incompetency required, if any such position was going to be taken during the trial. Defense [sic] basically acquiesced in the Court's decision.

Appellate counsel took the position before the Court of Appeals that Ms. Gaffey was a nonparticipant, which is not exactly true. She was a nonparticipant because her client told her not to participate. My own recommendation would have been today that we send him for a thirty-day study pursuant to that provision in the code.

I did not have in hand at the time I wrote my memorandum anything from the government because they sent their letter in late, and I did get subsequently a letter from the government in which they pointed out some other things that I had not taken into account in my letter.

Do you have a copy of that letter?

[4] MR. LATO: I do not have an extra copy of that with me, your Honor.

THE COURT: I want you to mark that as part of this file because there were added reasons. This is not the letter, but we can do that.

MR. LATO: The one dated March 22nd.

THE COURT: That's my position. I want that position to be taken to the court of appeals when they consider this question of a further stay of these proceedings.

Does the government want to add anything further?

MR. LATO: No, your Honor.

I think by virtue of what's in my letter and the Court's order and the obvious history in this case as reflected in the docket sheet, there is a good record before the court of appeals.

THE COURT: I want it known to the court of appeals that I want them to hear you before they make any decision.

MR. LATO: Then I'll put something on the record. This case, as you know –

THE COURT: I want you to.

I want them to hear you up here as well as there.

MR. LATO: I'll do it in both places, your Honor.

[5] The reason this case hasn't been tried in the last five years is basically twofold.

The first reason is that although the government was ready for trial four years ago, and in fact we were all set to go when we had a trial date, initially Mr. Zedner was saying that he had more time to do among other things, serve subpoenas on Alan Greenspan, William Jefferson Clinton, who at the time was the President of the United States, Chiang Kai-shek, all at the time to have interposed the ludicrous defense that the bonds that had misspellings were genuine.

The Court gave him also [sic] much latitude as he wanted. The Court also declared this case as complex for, among other reasons, the defendant needed time to serve all of these subpoenas. The government was again ready for trial. The defendant again wanted to interpose the

defense that these bonds were genuine, even though the "United States" was spelled wrong on the bonds.

When we were ready for trial the second time, your Honor called both me and Ms. Gaffey into chambers and basically suggested that you had great reservations about the defendant's competency and that although the government believed that the defendant was competent, the government was aware, the Court was aware and agreed to have a competency hearing, but the defendant was in fact [6] not competent to stand trial. And if he was found not competent at this hearing your Honor could send him to Buttner [sic: Butner], North Carolina or some other institution, and after in fact an examination, the institution determined he was not competent, that would be the end of the proceeding.

If on the other hand the institution determined he was competent, perhaps that would allay any fears your Honor had about the defendant's competency.

We attempted to have a competency hearing and at that point because Ms. Gaffey was in an advisory capacity, Mr. Zas felt on appeal that the best thing to do was to have a new competency hearing because Mr. Zedner was denied his right to counsel at a hearing.

The court of appeals agreed.

We came back.

The government's view again, we were always ready for trial, but we were doing whatever we could in this very difficult case because Mr. Zedner still maintained ridiculous positions and no rational jury could possibly credit his defense.

So basically the reason that we're hear [sic] today is that for whatever reason, whether it's strategic or some other reason, I cannot fathom we'll have to go back to the court of appeals again, and regardless of what happens in [7] the court of appeals at this time eventually this case will be tried.

Also Mr. Zas feels there is a speedy trial violation not [-] withstanding that Mr. Zedner waived his right to speedy trial for all time and this was declared a complex case, even if this Court winds up dismissing out of an abundance of caution without prejudice, given the fact that the five-year delay is entirely Mr. Zedner's fault or as a result of his borderline insanity.

So, at some point this case will be tried and the problem with this is that both the government and the Court have really gone out of their way to do what they could for Mr. Zedner because as the Court pointed out about three years ago if he was convicted at trial given the nature of the fraud the Court would have no choice but to put him in jail for several years.

This is one of the cases where basically everyone did something for the defendant short of having him stand trial and going to jail for several years.

That's basically the position I intend to take before the court of appeals, should Mr. Zas say on appeal either we need a new competency hearing or the case should be dismissed for speedy trial violations.

THE COURT: What I'm offering today – of course if he withdraws his appeal, to have him sent down for a [8] thirty-day study according to that statute.

MR. ZAS: Your Honor, may I say –

THE COURT: Say whatever you wish.

MR. ZAS: Thank you, your Honor.

First of all everything I've done in this case, every decision I've made has been part of my good faith effort to represent Mr. Zedner. We all have a job to do in this case –

THE COURT: But you will not be the trial attorney here, as I understand it.

MR. ZAS: I was not going to try this case alone, Judge.

THE COURT: I just want the court of appeals to recognize that Ms. Gaffey – it was at Ms. Gaffey's suggestion as well as mine that we do the competency route. You took it to the court of appeals with a different directive. You can do whatever you want. I can't stop you.

MR. ZAS: Absolutely, your Honor.

May I finish my response?

THE COURT: Yes.

MR. ZAS: Everything I've done has been part of what I felt was, what I feel was, my obligation to give Mr. Zedner the best defense I could give him consistent with the law and the rules of professional conduct.

[9] Now, Mr. Lato is correct. When I first got in the case, I saw the transcript and I saw your Honor's genuine well-founded concerns that Mr. Zedner might not be competent, and you were right. You said how could he believe these bonds were real? No one in their [sic] real mind could believe they were real. You even said if the case were at the Rule 29 stage you might even be inclined

to dismiss because you didn't believe he could be found to form intent here. I wanted to give your Honor that chance to get [sic] that, the Rule 29 stage, to say you're right, he's not a criminal, he may have illness.

THE COURT: Well, let's send him down to Buttner [sic] and is [sic] there the government attorneys will do a thirty-day study.

MR. ZAS: Your Honor, this man –

THE COURT: You don't want to do it?

MR. ZAS: Your Honor, I don't.

THE COURT: The record should show that.

MR. ZAS: I understand.

The reason we don't want to do that [sic] because this man is competent. He doesn't belong in any prison facility. He's able to talk to me, he understands what's happening and he'd like to have a trial, and we said this in August: Let's have a trial soon. The government in my experience never says they don't want to have a trial, [10] that's why they prosecuted. We want to have the trial too.

I've never heard of a situation where the government says we're prosecuting him, we think he's a criminal, but no, no, no, we don't want to try him. We want to have him declared incompetent.

THE COURT: The government doesn't want to be charged at the conclusion of the trial prosecuting somebody who is mentally incompetent.

MR. ZAS: I understand that. I understand that.

THE COURT: Let me send it to the Second Circuit. They obviously have psychologists and psychiatrists. They can make a determination better than we can.

MR. ZAS: That's true, your Honor.

I want to say just personally to your Honor that I have the utmost respect for this Court, and everything I've done is because I felt that it was my obligation to do it, and I would not have been effective –

THE COURT: I'm not criticizing you, although I don't think it's proper for you to say that he was not represented by counsel at the time of the first competency hearing. Ms. Gaffey is a very respected trial lawyer; you are not.

MR. ZAS: That's true, your Honor. I've never tried a criminal case by myself. But, your Honor –

[11] THE COURT: Go ahead to the court of appeals and see how far you get.

MR. ZAS: I'm just trying to make my record for the court of appeals, Judge.

THE COURT: Go ahead.

MR. ZAS: I never said that Ms. Gaffey was not there as advisory counsel; she was.

THE COURT: She was there as a lawyer.

MR. ZAS: Do you think –

THE COURT: He was the one that told her he did not want her to participate.

MR. ZAS: Well, your Honor, I respectfully agree [sic: disagree].

THE COURT: That's on the record.

MR. ZAS: I respectfully agree [sic: disagree].

I think the Second Circuit disagreed before and I think they will disagree again, and I understand your Honor's position.

THE COURT: Good.

MR. ZAS: I would ask because I think the Second Circuit would ask that that they do want your Honor to issue a ruling in the first instance on whether to stay this matter pending the full appeal. I think the order that they issued yesterday was just a temporary stay until April 21st.

THE COURT: No, my position is clear. I want to [12] send him for thirty days, to have a thirty-day study by competent psychiatrists who are in my book unbiased. One way or the other I want a thorough study done of him because I have a great deal of concern for the government to prosecute a man such as this.

I made that offer to you. You are refusing it.

That's your business.

Go ahead.

MR. ZAS: Your Honor, just for clarity, the record is that your Honor is saying that you are denying a stay of your March 21st order pending appeal.

THE COURT: I'm just amending my March 21st order to make that offer to you. I'm not going to stay that.

That offer I want them to reject.

MR. ZAS: Okay.

THE COURT: Okay.

MR. ZAS: Thank you.

(Whereupon, the proceedings were adjourned.)

[LOGO]

U.S. Department of Justice

United States Attorney
Eastern District of New York

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United States Attorney's Office
610 Federal Plaza
Central Islip, New York 11722-4454

April 2, 2003

The Honorable Thomas C. Platt
United States District Judge
Eastern District of New York
1044 Federal Plaza
Central Islip, NY 11722

Re: United States v. Jacob Zedner
CR 96-285 (TCP)

Dear Judge Platt:

The Government submits this letter to request that the Court hold a status conference at 10:30 a.m. on April 3, 2003. At the conference, the Government will move to dismiss the indictment without prejudice. If the Court grants the motion, the Government will ask a grand jury to re-indict Zedner on principally the same charges contained in the original indictment.

On or about March 7, 2001, Zedner, through attorney Edward Zas, moved to dismiss the indictment on speedy-trial grounds. (Docket Sheet Entry 126). The Court denied the motion on or about March 21, 2001. (*Id.*, Entry 128). If Zedner is convicted, Mr. Zas will argue to the Court of Appeals that this Court's ruling was incorrect. If Zedner's conviction is reversed on appeal, another year in this old case will have been lost.

Dismissal and re-indictment will not affect the April 7 trial date. Zedner's trial counsel, Tracey Gaffey, has informed me that she will still be ready for trial on April 7.

Respectfully submitted,

ROSLYNN R. MAUSKOPF
United States Attorney

By: /s/ Leonard Lato
Leonard Lato
Assistant U.S. Attorney

cc: Tracey Eadie Gaffey, Esq.
By Fax (631-712-6505)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA,	:	CR 96-285
	:	U.S. Courthouse
	:	Central Islip, New York
v.	:	
JACOB ZEDNER,	:	TRANSCRIPT OF PROCEEDINGS
	:	
Defendant.	:	April 3, 2003
	:	10:30 a.m.

----------X

BEFORE:

HONORABLE THOMAS C. PLATT, U.S.D.J.

APPEARANCES:

For the Government: ROSLYNN R. MAUSKOPF
United States Attorney
100 Federal Plaza
Central Islip, New York 11722
By: LEONARD LATO, ESQ.
Assistant U.S. Attorney

For the Defendant: THE LEGAL AID SOCIETY
Federal Defender Unit
100 Federal Plaza
Central Islip, New York 11722
By: TRACEY GAFFEY, ESQ.

Court Reporter: HARRY RAPAPORT, C.S.R.
U.S. District Court
100 Federal Plaza
Central Islip, New York 11722
(631) 712-6105

Proceedings recorded by mechanical stenography. Transcript produced by computer-assisted transcription.

[2] THE CLERK: Calling CR 96-285, United States v. Jacob Zedner.

MR. LATO: For the government, Leonard Lato.

Good morning.

MS. GAFFFEY: Tracey Gaffey for the public defender.

THE COURT: First of all, both sides ready for Monday morning?

MR. LATO: The government is ready. Yes, your Honor.

MS. GAFFFEY: Your Honor, I might have a problem with one witness. I am not quite sure. If the Court will allow me, I would like to revisit the matter at the end of the day. You know the witness, Dr. Drob, D R O B. He testified at our last competency hearing. I am planning on calling him as our witness. I spoke with him this morning. He had just recently gotten back from vacation. And before I was cutoff on the cell phone, he was trying to tell me that he was testifying in another case, and that must have been moved. So he might have a problem with next week. And since I don't have all the details and we were cutoff and I couldn't get him, and I couldn't raise him again. I am not sure of the problem. I am hoping we can, because I don't want to ask that this case be adjourned. And if I can have until the end of today to [3] reach Dr. Drob again.

THE COURT: You can't do it now?

MS. GAFFFEY: I tried right before I came to the Court. I tried both his numbers in my office before I came in here.

THE COURT: And he doesn't answer?

MS. GAFFFEY: I left two messages. One on the cell phone, and one on the hospital phone at Bellevue.

MR. LATO: Your Honor, with the Court's permission, while I try – I will try to accommodate Dr. Drob, I would consent to him testifying at any point, so if we can interrupt the government's case to accommodate him, subject to the Court's approval, fine.

THE COURT: That's accommodating.

Do you wish to call him right now here and leave him a message from here?

MS. GAFFFEY: I would do that, except, I didn't bring his two numbers with me. Although I can go back to my office and get them fairly easily.

THE COURT: Can you call the office and have them give you the number here?

MS. GAFFFEY: Yes, your Honor. That's what I am trying to do.

THE COURT: Do you have the number?

MS. GAFFFEY: I have it in my office?

[4] THE COURT: Do you have a number here where she can call and leave an alternate number?

THE CLERK: The courtroom number.

THE COURT: She can call this number from your office.

MS. GAFFFEY: Yes, your Honor.

THE COURT: The next question I have, and assuming arguendo we are going ahead on Monday, what does the government think we will need by way of the number of jurors?

MR. LATO: I think we called the standard 40 to 50, and that should be sufficient. This case doesn't involve drugs or organized crime or anything unusual, I don't see a large number of jurors saying they need to be excused for personal reasons.

However, the caveat to that is during – there will be testimony that Mr. Zedner made certain statements that could certainly offend certain members of society. For instance, there will be a witness who will testify that Mr. Zedner said one of the reasons there were spelling errors on the bond is because there were minorities or a lot of blacks working for the government where they can do those type of things.

I can see certain people being offended, so –

THE COURT: If you call 50 and then you can get [5] 30. So we need to call 50. And unless it is part of a much larger pool?

THE CLERK: I believe we may be the only jury.

THE COURT: I think if we wish to have 50, you may have to call about 75 or 80.

MS. GAFFFEY: I tend to agree with that, and not for the reasons Mr. Lato stated, but in this day and age people are a little more open, and they may know people who suffer from some sort of mental illness or emotional stability [sic]. And that may prompt –

THE COURT: We will put in an order for a hundred. You tell the jury clerk that if we put in for 100 we should get at least 50. Or he can translate it any way he wants – he or she wants. But we are hoping to have at least 50 available.

And there was the second consideration, as to how long the case will go for trial. Because the following week we are into the Passover and Easter week.

MR. LATO: Your Honor, I intend to rest late Tuesday or early Wednesday. My case will be very fast.

THE COURT: You have a whole slough of organizations here.

MR. LATO: Yes, your Honor. But I have no cooperators. And the way the issue is framed in this case, the whole issue in the trial is not whether [6] Mr. Zedner did these things, but did he have the requisite mens rea for fraudulent intent, and that's why as part of the defense case we will have Dr. Drob who will testify that Mr. Zedner is partly delusional and may actually have believed the bonds is genuine, so the cross of my witnesses will be rather brief.

THE COURT: You are going to call all seven banks or financial institutions?.

MR. LATO: I will actually call six. The Merrill Lynch account I will drop. The witness there disappeared and no one else dealt with Mr. Zedner.

THE COURT: All right.

MR. LATO: And I will also drop the counterfeiting count, the final count.

THE COURT: The second count, count eight?

MR. LATO: Count eight, yes.

THE COURT: All right.

And that will be in the superseding indictment which you hope to have handed up at some point. And have you discussed it with Ms. Gaffey?

MR. LATO: There is a twist on that, I also discussed it with Mr. Zas this morning, and I was unable to get a hold of him this morning.

Mr. Zas is correct, if the government moves to dismiss with respect to the old speedy trial clock it will [7] not help. The only way I can cure any potential speedy trial problem is if the defense maintains the position that there is a speedy trial problem. So, I am essentially putting the onus on Ms. Gaffey and Mr. Zas, because I know it was his motion originally. He thought this up.

The Court already ruled there was no speedy trial violation. However, I want to know if that's still Ms. Gaffey's position? Is there or is there not a speedy trial violation?

If Ms. Gaffey's position is that there is, the Court can dismiss this indictment without prejudice, and I am free to indict this afternoon.

If Ms. Gaffey states there is no speedy trial problem, then it is waived and I will proceed under the old indictment. But I cannot move to dismiss. That does not solve the problem, my motion to dismiss will not resolve the potential problem.

And I think we will be okay in the Court of Appeals based on your Honor's waiver for all time. And the last thing I want to do is in the year 2004 or 2005 to be back here to try this again.

THE COURT: I have stated previously that the burden is on the defendant when he or she consents to a waiver of all time. So if it were a complex case, they do [8] not change their position as to the waiver, and if it is no longer a complex case and they want to go to trial. And Mr. Zas refused to come down here to try the case, because he said he didn't know how to try a case.

MR. LATO: If I recall correctly Mr. Zas's position is the waiver of all time is not valid, the Court cannot do it. So it is not that his position has changed.

It is my request now in any event to put the onus on Ms. Gaffey.

THE COURT: It is very simple, Ms. Gaffey. My position on the waiver is under the statute. If you examine it carefully, you and your client may waive by simply not raising the question before a jury is selected. That's clear. The Second Circuit took another view of that, and said they didn't realize that can be done. In the meanwhile I formulated the view that if you can waive by inaction, you can waive it permanently.

As long as the defendant understood when they agreed or instigated the waiver for all time that they had the right to change their mind as long as they notified the Court they wanted an immediate trial, and then I would make the government go to trial immediately.

But, given that I always understood that your office's position would be the same way if they would abide by

that. But nothing seems to be permanent in this [9] world any more, as most things. And I do know what your position is today.

MS. GAFFFEY: Your Honor, first, I would like to know what posture we are in. I am not moving to reargue. Mr. Lato is not saying he is not moving to dismiss. Our motion was filed some time ago with the Court and denied.

THE COURT: Yes. I denied that. But there was never any notification by this Court that you were ready for trial. Indeed, a lot of water is now flowing over the damn since that event occurred.

MR. LATO: Your Honor, if I can make the following suggestion. I am doing it just as an attempt – again, I have great respect and affection for Ms. Gaffey and I am trying to pin her down.

Is it her position that speedy trial has been violated? Yes or no, at this point? I just need to know that. And I don't know if she is going to want to answer that.

MS. GAFFFEY: As a friend, I know what Mr. Lato is saying. I know what he is trying to do. But once again, I ask what is our posture? The defense isn't going to reargue. The government is not moving to dismiss the indictment. Our papers had been filed and denied. We don't withdraw them.

THE COURT: Well, anything that happens [10] subsequent to the original motion –

MS. GAFFFEY: Is your Honor asking me if I am making a speedy trial motion subsequent to the factual bases alleged in the original motion?

THE COURT: Yes.

MS. GAFFFEY: I am not making a new speedy trial motion today, no. I am not withdrawing the old one either.

THE COURT: I don't think we have violated the speedy trial rights the waiver was entered into in writing. And his appellate lawyer from the same office who told me he couldn't try the case because he didn't know how to try the case, attempted to get some sort of strategic advantage by making that motion. Evidently he was certainly not ready to try the case at that time, and I denied it.

Because the competency questions, I don't think it can be raised again.

MR. LATO: So, it is settled, we are going to trial on the old indictment.

THE COURT: He can raise it again if he wishes, but my position has been stated.

* * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
CENTRAL ISLIP DIVISION

UNITED STATES OF AMERICA

vs.

JACOB ZEDNER

JUDGMENT IN A CRIMINAL CASE

CASE NUMBER: CR-96-285

Defendant's Attorney: Tracey Gaffey

THE DEFENDANT:

☐ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☒ was found guilty on count(s) ONE, TWO, FOUR, FIVE, SIX, and SEVEN after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of the following count(s), involving the indicated offense(s):

Title & Section	**Nature of Offense**	**Date Offense Concluded**	**Count Number(s)**
18 USC 1344	**Bank Fraud, a Class B Felony**		1, 2, 4-7

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 and the Mandatory Victims Restitution Act of 1996.

☐ The defendant has been found not guilty on count(s)

☒ Count(s) THREE and EIGHT were dismissed on the motion of the United States at the beginning of trial.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Social Security Number:
122-78-0006

Defendant's Date of Birth:
August 7, 1954

Defendant's USM No.: 46534-053

Defendant's Residence Address:
In custody
72 Hicks Lane
Great Neck, NY

Defendant's Mailing Address: ____

Date of Imposition of Sentence: **1/22/2004**

/s/ Thomas C. Platt
THOMAS C. PLATT
UNITED STATES DISTRICT JUDGE

Date: January 23, 2004

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **SIXTY-THREE (63) MONTHS, on each count to run concurrent. The defendant is given credit for time served and for time in the custody of the Bureau of Prisons for psychiatric evaluations.**

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ **The defendant is remanded to the custody of the United States Marshal.**

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ a.m./p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons.

☐ before 2 p.m. on ___. If the defendant is not designated within the given time frame he/she should surrender to the Marshals office in Brooklyn. If the defendant has not already done so at the time of sentence he/she should communicate with the Marshals office to obtain information regarding the procedures for voluntary surrender.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

_____
United States Marshal

_____
By Deputy Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **FIVE (5) YEARS**.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

While on supervised release, the defendant shall not commit another federal, state or local crime, and shall not possess a firearm, ammunition, or destructive device as defined in 18 U.S.C. § 921.

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

☐ The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

The defendant shall comply with the following standard conditions that have been adopted by this court.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instruction of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to any substances, except as prescribed by a physician, and shall submit to periodic urinalysis tests as directed by the probation officer to determine the use of any controlled substance;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

14) if this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B. The defendant shall pay interest on any fine or restitution of more than $2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. §3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for default and delinquency pursuant to 18 U.S.C. §3612(g).

	Assessment	Fine	Total Restitution
Totals:	**$ 300.00**	**$**	**$**

FINE

The above fine includes costs of incarceration and/or supervision in the amount of $.

☐ The court has determined that the defendant does not have the ability to pay interest. It is ordered that:

☐ The interest requirement is waived.
☐ The interest requirement is modified as follows:

RESTITUTION

☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case will be entered after such determination. The U.S. Attorneys Office is directed to provide the necessary information to the court.

☐ The defendant shall make restitution to the following victims in the amounts listed below:

☐ Restitution is ordered jointly and severally with:

or

Name of Payee	Total Amount of Loss	Amount of Restitution Ordered	Priority Order Percentage of Payment
Totals:	$_____	$_____	

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column above.

The amount of loss and the amount of restitution ordered will be the same unless, pursuant to 18 U.S.C. §3664(f)(3)(B), the court orders nominal payments and this is reflected on Sheet 6, Statement of Reasons.

STATEMENT OF REASONS

☒ The court adopts the factual findings and guideline application in the presentence report.

OR

☐ The court adopts the factual findings and guideline application in the presentence report except: (see attachment, if necessary):

GUIDELINE RANGE DETERMINED BY THE COURT:

Total Offense Level: 25

Criminal History Category: II

Imprisonment Range: 63 to 78 months

Supervised Release Range: 3 to 5 years

Fine Range: $10,000 to $1,000,000

☒ Fine is waived or is below the guideline range, because of the defendant's inability to pay.

Restitution $

☐ The court finds pursuant to 18 U.S.C. § 3664(f)(3)(B) that the economic circumstances of the defendant do not allow for the payment of any amount of a restitution order, and do not allow for payment of the full amount of a restitution order in the foreseeable future under any reasonable schedule of payments and is therefore ordering only nominal payments be made.

☐ Restitution is not ordered because:

☐ the defendant was convicted of a qualifying offense under 18 U.S.C. § 3663(a)(1)(A) and the court has considered the factors enumerated in 18 U.S.C. § 3663(a)(1)(B)(i), determining an order of restitution not be appropriate.

☐ the defendant was convicted of qualifying offense under 18 U.S.C. § 3663(a)(1)(A) and court has considered the factors enumerated in 18 U.S.C. § 3663(a)(1)(B)(i); pursuant to 18 U.S.C. § 3663(a)(1)(B)(ii), it has been determined that the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims.

☐ the defendant was convicted of a qualifying offense under 18 U.S.C. § 3663A(c)(1)(A)(ii) and, pursuant to 18 U.S.C. § 3663A(c)(3)(A), the court finds from facts on the record that the number of identifiable victims is so large as to make restitution impracticable.

☐ The defendant was convicted of a qualifying offense under 18 U.S.C. § 3663A(c)(1)(A)(ii), and pursuant to 18 U.S.C. § 3663A(c)(3)(B), the court finds from facts on the record that determining complex issues of fact related to the cause or amount of the victims losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process.

☐ The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

OR

☐ The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the follow [sic] reason(s):

OR

The sentence departs from the guideline range:

☐ upon motion of the government, as a result of defendant's substantial assistance.

☐ for the following reason(s):

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term, 2003

(Argued: April 28, 2004 Decided: March 8, 2005
Errata Filed: March 15, 2005
2nd Errata Filed: March 23, 2005)

Docket No. 04-0821-cr

----------x

UNITED STATES
OF AMERICA,

Appellee,

-v.-

JACOB ZEDNER,

Defendant-Appellant.

----------x

Before: LEVAL and RAGGI, *Circuit Judges,* and STEIN, *District Judge.**

Appeal from a judgment of the United States District Court for the Eastern District of New York (Thomas C. Platt, J.) convicting Defendant-Appellant Jacob Zedner of attempting to defraud a financial institution in violation of 18 U.S.C. § 1344, and sentencing him to 63 months' imprisonment. The Court of Appeals (Leval, J.) holds that (1) any Speedy Trial Act error was harmless; (2) Speedy Trial Clause of the Constitution was not violated; (3) district court did not abuse its discretion in admitting evidence of other bad acts; (4) the conscious avoidance

* The Honorable Sidney H. Stein, United States District Judge for the Southern District of New York, sitting by designation.

charge did not constitute plain error; and (5) substantial risk existed that district court misapprehended its authority to depart downward. Conviction AFFIRMED. Sentence VACATED and REMANDED.

Stephen C. King, Assistant United States Attorney for the Eastern District of New York (Roslynn R. Mauskopf, United States Attorney, Emily Berger, Assistant United States Attorney, on brief), Brooklyn, NY, for *Appellee*.

Edward S. Zas, The Legal Aid Society, Federal Defender Division, Appeals Bureau, New York, NY, for *Defendant-Appellant*.

LEVAL, *Circuit Judge*:

Jacob Zedner appeals from his conviction after a jury trial in the United States District Court for the Eastern District of New York (Thomas C. Platt, J.) on six counts of attempting to defraud a financial institution in violation of 18 U.S.C. § 1344. Zedner claims, *inter alia*, that (1) lapses of time between the indictment and the start of trial violated his statutory and constitutional rights to a speedy trial; (2) the district court abused its discretion when it admitted evidence of his other bad acts; (3) the district court charged the jury incorrectly on conscious avoidance; (4) the court erred in the calculation of intended loss under U.S.S.G. § 2F1.1; (5) the district court misapprehended its authority to depart downward for diminished mental capacity and the loss amount's overstatement of the seriousness of the offense; and (6) the court erred in following the United States Sentencing Guidelines, which unconstitutionally deprive the defendant of the right to a

jury trial. We reject contentions (1) through (4); we agree with defendant's contention (5), which requires resentencing and moots contention (6).

BACKGROUND

In March 1996, Jacob Zedner approached a number of financial institutions to open an account using a counterfeit $10 million bond, ostensibly issued by the non-existent "Ministry of Finance of U.S.A." The bond contained numerous spelling mistakes and other errors.

The institutions uniformly refused to open an account for Zedner. One called the United States Secret Service, which arrested Zedner on March 12, 1996. A consensual search of Zedner's briefcase revealed three additional counterfeit bonds, each in the amount of $10 million, which, like the one he attempted to negotiate, were replete with mistakes.[1] The grand jury indicted Zedner on April 4, 1996 on various counts of attempting to defraud a financial institution in violation of 18 U.S.C. § 1344, and one count of knowingly possessing counterfeit bonds in violation of 18 U.S.C. § 472.

At the first status conference on June 7, 1996, Zedner's then-attorney failed to appear, and the district court entered an order excluding the delay until the next conference on June 21, 1996, under the Speedy Trial Act, 18 U.S.C. §§ 3161-3174. At the second status conference,

---

[1] Some of the bonds referred to the United States as the "Onited States" and "Thunted States," misspelled Philadelphia as "Dhtladelphla," misspelled Chicago as "Cgicago," referred to the month August as "Augit" and "Auouit," misspelled the word dollar, and claimed to have a duration of "forevev."

Zedner failed to appear, and the proceedings were again delayed until June 26, 1996. On June 26, the court entered an order excluding delay from June 26 through September 6, 1996, by reason of the complexity of the case. On September 6, the case was again adjourned, and the court excluded the delay until November 8, 1996.

On November 8, Zedner requested an adjournment of the case through the end of January. Because the court had lengthy trials pending, the judge expressed concern that Zedner might attempt to invoke speedy trial rights at an inconvenient time and insisted on a "waiver for all time" as a condition of granting the adjournment Zedner requested. The court advised Zedner of his rights, and Zedner executed a written waiver. The district court then entered an order of adjournment to January 31, 1997. Presumably because Zedner had signed a waiver of rights under the Speedy Trial Act "for all time," the judge entered no more orders of exclusion for the duration of the case.

On January 31, 1997, the government answered ready for trial, but Zedner's counsel requested another delay. The district court granted the request and scheduled jury selection for May 5. On May 2, Zedner's counsel, James Hagney, Esq., requested to be relieved on the ground that Zedner wished to assert a defense at trial that counsel believed not to have a "basis in law or fact," namely that the bonds were genuine. The court initially denied Hagney's motion but asked a representative of the Federal Defender Division of the Legal Aid Society to serve as advisory counsel. After Zedner's subsequent completion of a financial affidavit, the court relieved Mr. Hagney and appointed the Federal Defender Division of the Legal Aid Society as Zedner's counsel.

At the May 2 hearing, the court asked Zedner whether he would be willing to submit to a psychiatric examination. With Zedner's consent, the government arranged for an examination, and the court postponed the trial date while awaiting the psychiatrist's report. The psychiatrist issued her report on August 5, 1997, concluding that Zedner was competent to stand trial.

At a status conference on September 8, 1997, Zedner complained about his new attorney and asked to represent himself without an attorney. The court authorized Zedner to proceed *pro se* with the Federal Defender Division of the Legal Aid Society serving in an advisory capacity. Zedner then sought to serve subpoenas on numerous high government officials including President Clinton, Federal Reserve Chairman Alan Greenspan, Attorney General Janet Reno, and Secretary of State Madeleine Albright. While a magistrate judge was considering various motions to quash Zedner's subpoenas, Zedner moved to dismiss the indictment on the grounds that the government had violated his civil rights and that the agents who investigated him were guilty of treason.

At the status conference on December 17, 1997, the court once again scheduled jury selection, for February 17, 1998. However, on January 30, 1998, Zedner asked the court to adjourn the trial date to allow him to serve additional subpoenas on "The Treasury Department of Treasury International Corporation" and other nonexistent entities. Over the next eight months, the court granted many motions to quash subpoenas while Zedner continued to file motions and request subpoenas for parties unconnected to his case. On October 8, 1998, the court scheduled jury selection for October 14.

The morning the trial was scheduled to begin the court consulted with counsel in chambers while a jury panel waited. The court expressed concern that Zedner was mentally ill. The government disagreed, but moved for a psychiatric examination under 18 U.S.C. § 4241(a) in order to allay the court's concerns. The court dismissed the jury panel and inquired into Zedner's competency, concluding that Zedner was not competent to stand trial. Several days later the court ordered Zedner committed to the custody of the Attorney General for hospitalization and treatment pursuant to 18 U.S.C. § 4241(d). Zedner filed an interlocutory appeal, and in *United States v. Zedner (Zedner I)*, 193 F.3d 562 (2d Cir. 1999) (per curiam), we vacated the order of commitment and remanded for a new competency hearing on the ground that a competency hearing of a person whose competence is reasonably doubted should not proceed with that person acting as his own attorney.

The district court convened a status conference on April 4, 2000, but only the government appeared. At the rescheduled status conference held on April 27, 2000, the government and Tracey Gaffey, Esq. of the Federal Defender Division of the Legal Aid Society, now acting on Zedner's behalf, jointly requested that the court schedule the new competency hearing for July 10, 2000. The court complied, and the hearing was held as scheduled in July. At the close of the hearing, the court invited the parties to submit additional briefs on the issue of Zedner's competency. Ms. Gaffey submitted a brief on August 4 arguing that Zedner was competent to stand trial and requesting that the court schedule the case for trial "as soon as possible." The government filed a letter brief on August 11,

2000 taking the position that Zedner was incompetent to stand trial. Zedner filed a *pro se* brief on August 23, 2000.

In November, however, while the competency motion was on submission, Ms. Gaffey became unavailable to try the case for medical reasons relating to her pregnancy. Assistant U.S. Attorney Leonard Lato explained in a later affidavit that he received a phone call in late November 2000 from the Federal Defender Division of the Legal Aid Society informing him that "Ms. Gaffey would be out of the office for a few weeks for reasons related to her pregnancy." Lato was subsequently advised that "Ms. Gaffey was unlikely to return until some time after Ms. Gaffey gave birth." A month later, Lato discussed Zedner's case with Gaffey and the two agreed that the case did not require immediate attention.[2] On March 7, 2001, Zedner moved to dismiss the indictment with prejudice under the Speedy Trial Act and the Speedy Trial Clause of the Sixth Amendment. The court issued a memorandum order on March 21, 2001 denying Zedner's motions on the grounds that the case was complex and Zedner had waived his speedy trial rights "for all time."

Returning to the issue that was submitted to the court by the August briefing, the court found Zedner incompetent to stand trial and ordered him to surrender to the Attorney General for commitment. Zedner appealed, and we affirmed. *United States v. Zedner (Zedner II)*, 29 Fed. Appx. 711 (2d Cir. Feb. 21, 2002).

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[2] Although the record apparently is silent on the subject, we can confidently assume that the trial court was notified of the fact of Ms. Gaffey's prolonged unavailability.

In May 2002, Zedner entered a federal medical facility for psychological evaluation. Near the end of his commitment, Zedner moved to extend his stay by 90 days to allow for a more comprehensive evaluation. On August 27, 2002, Zedner was released. The institution's report found that Zedner was delusional but competent to stand trial. The district court accepted the report and scheduled jury selection to begin on April 7, 2003.

The trial focused primarily on Zedner's state of mind with respect to six efforts to open a bank account using a bogus bond. The government called representatives from the various financial institutions Zedner had approached, as well as a Secret Service agent, who testified that at the time of his arrest Zedner possessed credit cards and calling cards in at least five different names. Representatives of Citibank and American Express testified that the cards had uncollectible balances exceeding $13,000. In an effort to prove absence of fraudulent intent, the defense called as its only witness a psychologist who testified that Zedner suffered from a delusional disorder and genuinely believed the bonds he possessed were authentic. The government called two rebuttal witnesses. Both witnesses told similar stories of contacting Zedner in 1988 seeking assistance in the refinancing of a mortgage on her home. In each instance, Zedner transferred title to the home into his own name. Each witness testified that she had been obligated to sue to recover title to her house.

The jury convicted Zedner on six counts of fraud, each representing a separate attempt to open a financial account funded by a phony bond. In the presentence report, the Probation Department, using the 1995 version of the Guidelines Manual, which was in effect at the time of Zedner's crime, determined that his base offense level

was 6. It recommended adding two offense levels for more than minimal planning pursuant to U.S.S.G. § 2F1.1(b)(2)(A) and seventeen levels pursuant to U.S.S.G. § 2F1.1(b)(1)(R) based on a total intended loss of $40,013,285.19.

Zedner challenged the loss calculation. He also moved for a downward departure on grounds of diminished mental capacity and that the aggregate intended loss overstated the seriousness of his offense.

The court denied all of Zedner's motions. With respect to intended loss, the court set the level at approximately $60 million based on Zedner's six attempts to pass off a bond with a face value of $10 million. The court declined to grant a downward departure, explaining on the issue of diminished capacity that the jury had rejected the argument that, by reason of his delusions, Zedner did not possess the requisite *mens rea* during the commission of his crime. The court sentenced Zedner to 63 months in prison, with credit for time served during his competency exam, and 5 years of supervised release. It also imposed a mandatory special assessment of $300.

Zedner then brought this appeal.

DISCUSSION

I. Speedy Trial Act

Zedner claims that his rights under the Speedy Trial Act were violated based on two periods of delay: (1) January 31, 1997 until May 2, 1997, during which the district court entered no order of exclusion while postponing trial at Zedner's request; and (2) August 11, 2000 until March 7, 2001, a period in which Zedner's competence to stand trial was in question and Zedner's attorney became unavailable

because of pregnancy complications. As to both periods, we reject Zedner's contentions.

The Speedy Trial Act provides that the trial of a defendant must commence within seventy days from the date he is indicted or brought before a judicial officer, whichever occurs later, 18 U.S.C. § 3161(c)(1), failing which § 3162(a)(2) directs dismissal of the indictment. In counting the passage of seventy days, however, the district court may exclude certain periods of time as specified in § 3161(h). For example, the speedy trial calculation does not include "delay resulting from any proceeding, including any examinations, to determine the mental competency or physical capacity of the defendant," § 3161(h)(1)(A); "delay resulting from any interlocutory appeal," § 3161(h)(1)(E); certain delay related to pretrial motions, § 3161(h)(1)(F); reasonable delays up to 30 days while any question is under advisement, § 3161(h)(1)(J); "[a]ny period of delay resulting from the fact that the defendant is mentally incompetent or physically unable to stand trial," § 3161(h)(4); or any period of delay for which the district court finds on the record that the "ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial," § 3161(h)(8). Although seven years passed between Zedner's indictment and the start of his trial, most of the delay falls squarely within one of these statutory grounds for exclusion.

The exclusions contained in §§ 3161(h)(1)-(7) are, for the most part, self-executing, but § 3161(h)(8) provides that no exclusion based on the "ends of justice" shall be valid "unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant

in a speedy trial." The district court followed this procedure throughout 1996, entering several orders of exclusion based on the failure of Zedner's counsel to appear, the failure of Zedner to appear, and the complexity of the case. After several continuances, however, the court grew concerned that Zedner might invoke the delays he caused or requested as the basis for a motion to dismiss the indictment under the Speedy Trial Act. When counsel for Zedner requested a three-month adjournment of the case in November 1996, the district court responded, "I think if I'm going to give you that long an adjournment, I will have to take a [speedy trial] waiver for all time. . . . I have some big cases and if I get bogged down with them you may be a long while before you get a trial." The defendant agreed to the request. His counsel assured the court, "We'[ll] waive for all time. That will not be a problem. That will not be an issue in this ease." Thereafter, the court spoke directly to Zedner. It informed him, "I'm prepared to start your trial right away," and warned, "I have some fairly big cases pending in my docket, one of which is set to take eight months for trial. If you get locked in, if that starts before you start, you may have to wait until that is done." Zedner then executed both an oral and written waiver of his speedy trial rights "for all time." Thereafter, the district court did not enter any orders of exclusion based on its assumption that the waiver "for all time" removed all speedy trial issues from the case.

A. Period from January 31, 1997 to May 2, 1997

Zedner alleges that the lapse of over 90 days between January 31, 1997 to May 2, 1997 (a period which exceeds the seventy days allowed by the Act) requires dismissal of the indictment. In denying Zedner's motion under the

Speedy Trial Act, the district court relied on Zedner's waiver of his speedy trial rights "for all time." However, in *United States v. Gambino,* 59 F.3d 353 (2d Cir. 1995), we ruled, like other circuits, that a defendant's waiver of rights under the Speedy Trial Act may be ineffective. *Id.* at 360. We observed that the public has a strong and independent interest in the expeditious prosecution of criminal cases. That public interest would be undermined if the provisions of the Act intended for the public benefit could be routinely nullified by a defendant's waiver.

At the same time, however, in an effort to reach a reasonable balance between the interests of the public and of the defendant, we recognized in dictum an exception to the non-waiver rule "when defendant's conduct causes or contributes to a period of delay." *Id.* Such an exception had been previously crafted by the First Circuit in *United States v. Pringle,* 751 F.2d 419, 434 (1st Cir. 1984). In *Pringle*, a defendant sought three continuances. The third motion stated that the defendants "waive their rights to a speedy trial." *Id.* at 433. The district court granted the motion and scheduled trial for two months later. *Id.* However, the trial was not held, and an additional five months passed before the filing of a motion stopped the speedy trial clock. *Id.* at 434. The record contained no explanation for the delay, and the First Circuit remanded the case to determine the cause. *Id.* at 436. It instructed the district court to exclude the five-month period from the speedy trial calculation if the district court determined on remand that the defendants' request for delay and purported waiver had induced the delay. *Id.* at 435. The First Circuit expressed concern that a contrary ruling would reward the defendants because "[i]n essence, defendants would have successfully worked both sides of the street,

lulling the court and prosecution into a false sense of security only to turn around later and use the waiver-induced leisurely pace of the case as grounds for dismissal." *Id.* at 434.

The Seventh Circuit aired similar reasoning in *United States v. Kucik*, 909 F.2d 206 (7th Cir. 1990). As an alternative holding rejecting the defendant's speedy trial claim, the court explained, expressing approval of *Pringle*, that a defendant who "actively participates in a continuance" cannot "then 'sand-bag' the court and the government by counting that time in a speedy trial motion." *Id.* at 211.

The Fifth Circuit rejected that reasoning in *United States v. Willis*, 958 F.2d 60 (5th Cir. 1992). Willis, who was unrepresented by counsel at the time, requested additional time to prepare for trial and, at the prompting of the district court, waived his speedy trial rights. *Id.* at 62. The district court then granted an open-ended continuance until Willis indicated he was ready for trial. Willis later moved to dismiss the indictment based on the resulting period of delay. Despite earlier Fifth Circuit dictum approving of *Pringle*, *see United States v. Kington*, 875 F.2d 1091, 1108 (5th Cir. 1989), the court expressed concern that a broad exception would swallow the non-waiver rule. It agreed that "the defendant should not be allowed to argue one legal theory or characterization of facts to obtain a continuance and then argue that the district court's ruling was erroneous to seek dismissal under the Act." *Willis*, 958 F.2d at 64. But it concluded that a "district court is not sandbagged or otherwise misled . . . by a defendant's simple request for or acquiescence in a continuance and its own insistence upon a waiver." *Id.* The court worried that the non-waiver rule would be "meaningless if . . . the defendant waives his

ability to move for dismissal of the indictment simply by asking for or agreeing to a continuance." *Id.* It therefore charged district courts with the responsibility of ensuring that any request for a continuance, even one sought or agreed to by the defendant, fall within one of the exceptions contained in the Speedy Trial Act. *Id.*

The Fourth Circuit adopted yet another approach in *United. States v. Keith*, 42 F.3d 234 (4th Cir. 1994). The delay in *Keith* came about when the Assistant United States Attorney fell ill several days before trial was scheduled to start. *Id.* at 236. The district court granted the government's motion for a continuance in a written order that was signed by defense counsel as "[s]een and agreed." *Id.* (alteration in original). The defense attorney later reversed course and moved to dismiss the indictment on speedy trial grounds immediately before the rescheduled trial was set to begin. After concluding that the order granting the continuance failed to meet the procedural requirements of the § 3161(h)(8) "ends of justice" exception, the Fourth Circuit turned its attention to the question of whether the defendant could use the delay acquiesced to by his counsel in support of his Speedy Trial Act claim. *Id.* at 238. The Fourth Circuit expressed concern about the breadth of the rule announced in *Pringle* and *Kucik*, which "would appear to find a waiver when a defendant consents to a continuance occasioned on *any* reason, including the district judge's desire to go fishing." *Id.* at 239. At the same time, the Fourth Circuit characterized the rule in *Willis* as "too narrow." *Id.* The Fourth Circuit instead adopted a middle position, concluding that "if a defendant affirmatively consents to a motion for a continuance and the reasons for the granting of that motion as garnered from the record are sufficient to

support a finding that the ends of justice would be met by granting the motion, the defendant cannot take advantage of that discrete period of time covered by the continuance in asserting a violation of the Speedy Trial Act." *Id.* at 240.

We agree with the Fourth Circuit that the approach taken by the Fifth Circuit in *Willis* does not strike the right balance. We very much doubt that the public interest in expeditious prosecution would be served by a rule that allows defendants to request a delay and then protest the grant of their request. In our view the public interest is not advanced either by allowing such a defendant to escape prosecution altogether, or by dismissing the indictment and reindicting with consequent wasteful reprosecution after a substantial additional delay. *But see United States v. Janik*, 723 F.2d 537, 546 (7th Cir. 1983).

We need not define the exact scope of the exception to the non-waiver rule in order to decide the case before us. At the very least, when a defendant requests an adjournment that would serve the ends of justice, that defendant will not be heard to claim that her Speedy Trial rights were violated by the court's grant of her request, regardless whether the court made an "ends of justice" finding under § 3161(h)(8).

On January 31, 1997, the government stated that it was ready to proceed to trial. Counsel for Zedner, however, indicated that he was not ready for trial and requested a continuance. The court granted the request and delayed jury selection until May 5, 1997. Given the complexity of the case and Zedner's reasonable need for additional preparations, there can be no doubt that the district court could have properly excluded this period of time based on the ends of justice. Zedner therefore cannot establish a

Speedy Trial Act violation based on the grant of the delay he requested. His claim regarding January 31, 1997 to May 2, 1997 fails.[3]

B. Period from August 2000 to March 7, 2001

Zedner also alleges that the court's failure to start his trial between August 2000 and March 7, 2001, requires dismissal of the indictment. We reject his contention. Zedner could not have been tried in this period, for two reasons.[4]

First, as noted above, beginning in late November 2000, Zedner's counsel Ms. Gaffey became unavailable for trial by reason of complications resulting from her pregnancy. Ms. Gaffey's Federal Defender office advised the AUSA first that she would be out for a few weeks, and later that her unavailability would continue until some time after she gave birth. The court could not have started trial at a time when the defendant's lawyer would have been unavailable to participate.[5]

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[3] Notwithstanding this ruling, district courts contemplating adjournment of trial are far better advised to make prospective "ends of justice" findings under § 3161(h)(8), where appropriate, rather than to rely on defendant waivers. Reliance on waivers "for all time" seems particularly inadvisable. *See Gambino*, 59 F.3d at 359-60.

[4] We note in passing that the first thirty days after the August 23 filing of Zedner's *pro se* brief addressing his competency to stand trial clearly fall under 18 U.S.C. § 3161(h)(1)(J), which excludes "delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement by the court."

[5] Of course, a district court has discretion to replace a court-appointed attorney whose unavailability will be extensive. Similarly, it may require a defendant whose retained counsel is unavailable to defend a case on the reasonable schedule established by the court to secure the services of another attorney.

In addition, Zedner could not have been tried in this period because he was not competent to stand trial. The question of his competence was submitted in August 2000. The court held the matter under advisement for some time, but eventually found Zedner incompetent and ordered him committed. We affirmed that decision on appeal. *Zedner II,* 29 Fed. Appx. at 713. No court conferences were held during this time, perhaps because the court considered it useless to convene a conference knowing that Zedner's counsel would not be able to appear.

It might be argued on Zedner's behalf that this time during which he was not competent may not be excluded because, so far as the record reflects, the delay did not *result from* the fact that he was incompetent. Section 3161(h)(4) excludes "[a]ny period of delay resulting from the fact that the defendant is mentally incompetent or physically unable to stand trial." The argument might be made that the court's failure either to make a record that the delay resulted from the defendant's incompetence or to start trial was at least potentially a technical violation of the Act.

The question would then be whether a defendant is entitled to have his conviction voided and the indictment dismissed by reason of the court's failure to begin trial at a time when the court could not have begun trial because the defendant was incompetent, as well as because the defendant's counsel was unavailable for trial. The failure to start trial when the defendant could not have been tried was, at worst, a harmless, technical error, and, in our view, cannot justify vacating the conviction and dismissing the indictment.

Zedner argues that a violation of the Speedy Trial Act's 70-day period for bringing a defendant to trial cannot be deemed harmless, and that dismissal of the indictment is the mandatory remedy for any violation of the statute. We disagree. As explained below, recognition of the distinction between harmless error and error affecting substantial rights furthers, rather than detracts from, the purposes of the Speedy Trial Act

While it is true that, in some speedy trial cases, we have directed dismissal of the indictment without discussing harmless error analysis, *see, e.g., United States v. Kelly*, 45 F.3d 45, 48 (2d Cir. 1995) (per curiam) (remanding to district court to determine whether dismissal should be with or without prejudice); *United States v. Simmons*, 786 F.2d 479, 486 (2d Cir. 1986) (instructing district court to dismiss indictment without prejudice); *United States v. Tunnessen*, 763 F.2d 74, 79 (2d Cir. 1985) (dismissing indictment without prejudice), we held in *Gambino* that the failure to bring the defendant to trial within 70 non-excludable days from the filing of the indictment constituted harmless error. 59 F.3d at 363. In addition, at least three circuits have required a showing of prejudice when reviewing alleged violations of the Speedy Trial Act's requirement that defendants be given at least 30 days to prepare between indictment and the start of trial. *See, e.g., United States v. Edwards*, 211 F.3d 1355, 1358 (11th Cir. 2000); *United States v. Cisneros*, 112 F.3d 1272, 1277 n.3 (5th Cir. 1997); *United States v. Grosshans*, 821 F.2d 1247, 1252-53 (6th Cir. 1987).

We acknowledge that these precedents do not necessarily resolve the question. There are differences. In *Gambino* the defendant had conceded that reindictment "would have been inevitable" following dismissal of the

original indictment without prejudice. *Gambino*, 59 F.3d at 363. Furthermore, the exercise of statutory interpretation in the case of a violation of the 30-day preparation period required by § 3161(c)(2) is not precisely identical to that for violation of the 70-day requirement of § 3161(c)(1). Section 3162(a)(2) provides on its face that the "indictment . . . shall be dismissed" if the "defendant is not brought to trial within the time limit required by 3161(c)." The Speedy Trial Act does not contain a remedy expressly directed to failure to allow the defendant 30 days for preparation as required by § 3161(c)(2).

Nonetheless, we conclude that harmless error analysis is appropriate in Speedy Trial Act cases because of that statute's relationship to other governing statutes and rules (as well as because Congress could not reasonably have intended the absurd results that otherwise follow). Section 2111 of Title 28, United States Code, instructs appellate courts to "give judgment . . . without regard to errors or defects which do not affect the substantial rights of the parties." Federal Rule of Criminal Procedure 52(a) similarly instructs courts to disregard "[a]ny error, defect, irregularity, or variance that does not affect substantial rights." The Speedy Trial Act does not indicate that these normative principles should be disregarded, and we can see no reason why they should be.

There are excellent reasons to distinguish between errors under the Speedy Trial Act that are harmless and those that are harmful. Delay unquestionably can be prejudicial to an accused defendant. It can result in faded or lost memories, or even the death or other unavailability of witnesses. Likewise, in some circumstances, delay can be prejudicial to the public interest protected by the Act. On the other hand, failure to consider the harmlessness of

certain errors under the Speedy Trial Act can result in perverse outcomes, including allowing serious crimes to go unpunished, and causing the objective of the Act to expedite the administration of criminal justice to be undermined. A case tried to a satisfactory conclusion a few days later than the Act specifies, without substantial adverse effect on anyone, can require costly retrial a year or more later, after appeal, dismissal of the indictment, and reindictment, in a manner causing vast expense, inefficiency, unfairness, and unjustifiable delay in the administration of criminal justice. We see no reason to believe Congress intended such illogical results.

Absent a clear indication to the contrary, we believe the Speedy Trial Act should be interpreted, like other laws, to operate consistently with the overriding prescription of 28 U.S.C. § 2111 that courts should disregard defects that do not affect substantial rights.

Needless to say, the availability of harmless error analysis does not trivialize the Act's concerns. Furthermore, as we cautioned in *Gambino*, "our holding is not a signal that affirmance of a district court's failure to dismiss an indictment on harmless error grounds . . . will routinely follow. On the contrary, since we review the question of prejudice *de novo*, nondismissal in the event of a violation will always risk nullifying an entire trial." *Gambino*, 59 F.3d at 363.

The question we face is whether Zedner is entitled to have his conviction vacated and the indictment dismissed by reason of the court's failure to start trial during a period when trial could not have been conducted – because Zedner was not competent to stand trial and Zedner's counsel was not available. Zedner has failed to put forth

any convincing argument that this delay prejudiced him at his trial.[6] We conclude without hesitation that the error, if any, was harmless and that Zedner is not entitled to Speedy Trial Act relief on that account.

II. Speedy Trial Clause

In addition to his claims under the Speedy Trial Act, Zedner also argues that his rights under the Speedy Trial Clause of the Sixth Amendment have been violated by the seven-year delay between indictment and trial. In *Barker v. Wingo*, 407 U.S. 514 (1972), the Supreme Court identified four factors relevant to determining whether the Speedy Trial Clause of the Sixth Amendment has been violated: (1) length of the delay; (2) the reason for the delay; (3) whether and how the defendant asserted the speedy trial right; and, (4) prejudice to the defendant. *Id.* at 530. The Court cautioned that "these factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process." *Id.* at 533. We conclude that there was no violation of the Speedy Trial Clause of the Sixth Amendment.

It is true that the first factor, length of the delay, favors Zedner, *see United States v. New Buffalo Amusement Corp.*, 600 F.2d 368, 377 (2d Cir. 1979) (54-month

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[6] Zedner complains that he was prejudiced when the government impeached the psychologist who testified as the only witness on Zedner's behalf on the ground he had not examined Zedner until years after Zedner committed his crime. The problem with this argument is that the psychiatrist examined Zedner on May 5, 2000, three months *before* the period of delay of which Zedner complains, and therefore any prejudice cannot be attributed to the district court's failure to rule expeditiously in August 2000.

delay "is unquestionably substantial"), but the second factor, the reasons for the delay, weighs heavily against him. Most of the delay between indictment and trial was caused by Zedner's own requests for delay, his attempts to subpoena prominent persons and fictitious entities, the need to determine his competency to stand trial, Zedner's incompetency for a time, and two interlocutory appeals taken by him. *See United States v. Vasquez*, 918 F.2d 329, 338 (2d Cir. 1990) (citing defendant's various pretrial motions as reason weighing against defendant); *see also United States v. Mills*, 434 F.2d 266, 271 (8th Cir. 1970) (holding "that delays encountered in bringing a defendant to trial who claims to be incompetent or who is temporarily incompetent ordinarily do not infringe upon his Sixth Amendment right to a speedy trial," and citing, *inter alia*, *United States v. Davis*, 365 F.2d 251 (5th Cir. 1966); *Johnson v. United States*, 333 F.2d 371, 374 (10th Cir. 1964)).

The third factor, whether and how the defendant asserted the speedy trial right, also weighs against Zedner. For several years, Zedner repeatedly requested continuances. His request to be tried "as soon as possible" did not come until August 2000, nearly four-and-a-half years after his indictment. *See United States v. Jones*, 91 F.3d 5, 8-9 (2d Cir. 1996) (failure to assert right for four months after indictment weighs against defendant).

The fourth and final factor, prejudice to the defendant, also weighs against Zedner. Prejudice "should be assessed in the light of the interests . . . the speedy trial right was designed to protect. . . . : (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired." *Id.* at 532. Of these interests, "the most

serious is the last." *Id.* Zedner was not incarcerated prior to trial and his bail conditions were not particularly onerous. He undoubtedly experienced anxiety, but the record contains no indication that the anxiety was acute. There is no indication that Zedner's ability to mount an effective defense was seriously impaired. Indeed, much of the pretrial delay resulted from the wide latitude the district court granted Zedner to prepare his defense.

Balancing the four factors identified in *Barker*, we conclude that Zedner's Sixth Amendment right to a speedy trial was not violated. The gap between indictment and trial was long, but the major part of the delay resulted from his requests for delay and serious problems concerning his competency to be tried.

III. Rule 404(b) Evidence

Zedner claims the district court abused its discretion by admitting testimony of two rebuttal witnesses to the effect that Zedner committed frauds in 1988. The first witness testified that, when she sought Zedner's help to refinance her mortgage, he transferred the deed to her home into his own name. She had to file a lawsuit to regain title. The second witness also approached Zedner for help refinancing her mortgage. She consented to a dummy sale of her house to Zedner with the understanding that he would refinance the house in his own name to overcome her bad credit rating and then return the house to her. When Zedner asserted full ownership, the witness sued to recover title.

Federal Rule of Evidence 404(b) provides that prior act evidence "is not admissible to prove the character of a person in order to show action in conformity therewith,"

but "may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident" This court considers four factors to determine whether evidence was properly admitted under Rule 404(b): "whether (1) it was offered for a proper purpose; (2) it was relevant to a material issue in dispute; (3) its probative value is substantially outweighed by its prejudicial effect; and (4) the trial court gave an appropriate limiting instruction to the jury if so requested by the defendant." *United States v. LaFlam*, 369 F.3d 153, 156 (2d Cir. 2004) (per curiam). This evidence of fraud was offered for a proper purpose and was relevant. Zedner based his defense on the claim that he was delusional and lacked criminal intent because he did not know the bonds were counterfeit. Testimony about his other fraudulent acts tended to prove Zedner's financial sophistication, his ability to execute complex schemes, and his ability to form intent to defraud. *See United States v. Downing*, 297 F.3d 52, 59 (2d Cir. 2002). Although admission of other bad act evidence runs the risk that the jury will punish the defendant for the other actions rather than the charged offense, the probative value of the evidence outweighed any prejudice. Moreover, the district court reduced any risk of unfair prejudice with a carefully worded limiting instruction. Accordingly, we conclude that the district court did not err, much less abuse its discretion, when it admitted this evidence of fraud.

IV. Conscious Avoidance

Zedner contends that the district court erroneously instructed the jury on conscious avoidance. He challenges both the decision to give the instruction and the content of

the instruction. We conclude that an appropriate factual basis existed to give the conscious avoidance charge. Although the precise charge given was not ideal, no objection was made to its specific terms and its deficiencies were not so dire as to constitute plain error.

"A conscious-avoidance charge is appropriate when (a) the element of knowledge is in dispute, and (b) the evidence would permit a rational juror to conclude beyond a reasonable doubt 'that the defendant was aware of a high probability of the fact in dispute and consciously avoided confirming that fact.'" *United States v. Hopkins*, 53 F.3d 533, 542 (2d Cir. 1995) (quoting *United States v. Rodriguez*, 983 F.2d 455, 458 (2d Cir. 1993)). Zedner concedes that the first prong has been met because he denied knowing that the bonds were counterfeit. He contends, however, that the second prong was not met because there was an insufficient factual basis for the jury to conclude that he deliberately chose not to inquire into whether the bonds were genuine.

Zedner relies on two main arguments. First, he points out that, contrary to what one would expect of a person avoiding the truth, he repeatedly took the bonds to different financial institutions in an attempt to determine their authenticity. The argument mischaracterizes the evidence. Zedner took the bonds to financial institutions attempting to use them in a fraudulent transaction. He insisted on the bonds' authenticity and told elaborate lies to cover for the bonds' obvious facial defects. Nor did he disclose his prior unsuccessful attempts to deposit the bonds with other institutions. We cannot say on this record it would have been irrational for a jury to conclude that Zedner avoided the truth about the bonds.

Second, Zedner argues that there was no adequate factual basis for giving a conscious avoidance charge because the jury could have concluded either that (1) Zedner was not delusional at all and therefore had actual knowledge that the bonds were counterfeit, or that (2) Zedner was delusional and did not make a conscious decision to overlook the suspect nature of the bonds because he genuinely believed they were real. He is correct that jurors could have found he actually knew the bonds were counterfeit, in which case they should have convicted, or that he genuinely believed they were genuine, in which case they should have acquitted him. But the jury could also have reasonably concluded that Zedner was aware of the high probability that the bonds were counterfeit and deliberately avoided confirmation of that fact. A conscious avoidance instruction "is not inappropriate merely because the government has primarily attempted to prove that the defendant had actual knowledge." *Hopkins*, 53 F.3d at 542; *see also United States v. Wong*, 884 F.2d 1537, 1542 (2d Cir. 1989). We conclude that the district court made no error in its decision to instruct the jury on conscious avoidance.

We now turn to the specific language of its instruction. After the district court initially overruled Zedner's objection to giving the conscious avoid charge, the defense proposed changes to the wording of the charge. The district court accepted these changes. The defense renewed its objection to giving the charge after the jury retired, but never raised any specific objections to the content of the modified charge. Accordingly, we review the language used by the district court for plain error. *See United States v. Feroz*, 848 F.2d 359, 360-61 (2d Cir. 1988) (per curiam); *United States v. Lanza*, 790 F.2d 1015, 1021 (2d Cir. 1986).

In the course of its instruction, the district court said, "knowledge that Government's Exhibit 1 was a fictitious instrument may he inferred [from] circumstances that convince an average or other person that . . . this is the fact." Trial Tr. at 417. Zedner argues that allowing the jury to infer knowledge from circumstances that would convince "an average or other person" that the bonds were false invited the jury to convict based on negligence. *See Rodriguez*, 983 F.2d at 458 (suggesting that conscious avoidance cannot be found merely because the circumstances "'should have apprised [the defendant] of the unlawful nature of [his] conduct'" (quoting *United States v. Joyce*, 542 F.2d 158, 161 (2d Cir. 1976)). If this language stood alone, Zedner would have a strong point. However, we review a potentially erroneous instruction in "light of the jury charge as a whole." *United States v. Beech-Nut Nutrition Corp.*, 871 F.2d 1181, 1196 (2d Cir. 1989); *see also Jones v. United States*, 527 U.S. 373, 391 (1999) (citing cases). The problematic instruction quoted above was given in conjunction with other passages, which told the jury, "If the defendant did not knowingly . . . make material misrepresentations you must find the defendant not guilty," and that it could not convict even if the "reason that the defendant lack[ed] such knowledge . . . was careless[ness] and negligen[ce] or even foolish[ness]." Trial Tr. at 417. In addition, the court said that conscious avoidance could not satisfy the knowledge requirement, regardless of what an average person would believe in the situation, if "the facts showed that the defendant actually believed that the instrument was authentic." *Id.* Reviewing the charge as a whole, we conclude that the risk of misunderstanding was substantially diminished. We therefore cannot say any error was "so obvious and seriously prejudicial to [Zedner's] substantial rights" as to

warrant relief where Zedner made no objection to the content of the charge. *United States v. Bonito*, 57 F.3d 167, 174 (2d Cir. 1995).

IV. Downward Departures

Zedner alleges that the district court mistakenly believed it lacked the authority to grant a downward departure on the basis of diminished mental capacity or his contention that the loss determination overstated the seriousness of the offense. The government responds that the district court understood its authority to depart but chose not to exercise that authority as a matter of discretion. The decision whether to depart is committed to the sentencing court's discretion, but we remand for resentencing when we perceive a "substantial risk that the judge misapprehended the scope of his departure authority." *United States v. Silleg*, 311 F.3d 557, 561 (2d Cir. 2002) (internal quotation marks omitted).

The district court's comments at sentencing, although ambiguous, appear on occasion to conflate the standard for diminished mental capacity with the standard for failure to form criminal intent. As a result, the district court seemed to conclude that it could not grant a downward departure for diminished mental capacity in light of the jury verdict finding beyond a reasonable doubt that Zedner intended to defraud the various financial institutions he approached with his counterfeit bonds.

A downward departure for diminished mental capacity "may be warranted if (1) the defendant committed the offense while suffering from a significantly reduced mental capacity; and (2) the significantly reduced mental capacity contributed substantially to the commission of the offense."

U.S.S.G. § 5K2.13. A finding of diminished mental capacity does not necessarily mean that a defendant lacked criminal intent. *See United States v. Ventrilla*, 233 F.3d 166, 169 (2d Cir. 2000) (per curiam) ("[The district court's] statement suggests that it thought of diminished capacity as a question of *mens rea* for the jury to decide at trial . . . rather than a question for the court at sentencing. But that is incorrect."). For example, a defendant might fully intend to defraud a business partner, but if the fraud itself was motivated by baseless delusions that the defendant needed the money to ransom a fictitious kidnap victim, a sentencing court might properly find that the defendant was less culpable and grant a downward departure. If a jury verdict convicting the defendant, and thereby indicating that the defendant formed the requisite criminal intent, precluded such a departure, it would make little sense for § 5K2.13 to appear in the Guidelines, because by the time a judge considers a downward departure for diminished mental capacity, every defendant has necessarily been found, either based on his plea or trial evidence, to have acted with criminal intent. Indeed, an application note added to the Guidelines in 1998 stated, "'Significantly reduced mental capacity' means the defendant, *although convicted*, has a significantly impaired ability to (A) understand the wrongfulness of the behavior comprising the offense or to exercise the power of reason; or (B) control behavior that the defendant knows is wrongful." U.S.S.G. App. C, amend. 583 (codified at U.S.S.G. § 5K2.13, cmt. n.1) (emphasis added). Although this amendment was added after the 1995 version of the Guidelines used in this case, it merely made explicit what was already implicit in the structure of the Guidelines – a conviction does not preclude a downward departure for diminished mental capacity.

In rejecting counsel's argument for departure based on diminished mental capacity, the court said,

> You argued, I thought very successfully, to the jury, that he was suffering, if I can use that word, from a delusional complex. I think the jury might have bought it up until the last two witnesses of the people who he attempted to defraud by his machinations, and [at that] point, whatever delusional defense you had went out the window, and I'm not going to interfere with that determination by the jurors.

We cannot discern exactly what the court meant by this statement. It seems to suggest that the court believed the jury's rejection of the defendant's contention that he acted without intent to defraud precluded the court from finding diminished mental capacity that would justify a departure. If so, that was incorrect. The defendant could have acted with criminal intent so as to be guilty of the crime, while at the same time suffering from a diminished mental capacity that would justify departure. Such a departure would in no way "interfere with" the jury's finding of guilt.

In two other respects the court may have misunderstood its sentencing discretion. Zedner's counsel argued that the loss calculation under U.S.S.G. § 2F1.1(b)(1) overstated the seriousness of his offense because the bonds were so obviously invalid that they were unlikely to fool any financial institution. The court responded that it "never saw anything in the sentencing guidelines" to support that contention. In fact, Comment 10 to the pertinent guideline expressly authorizes the argument Ms. Gaffey was making. It states, "In a few instances, the loss determined under subsection (b)(1) may overstate the

seriousness of the offense. This may occur, for example, where a defendant attempted to negotiate an instrument that was so obviously fraudulent that no one would seriously consider honoring it. In such cases, a downward departure may be warranted." U.S.S.G. § 2F1.1, cmt. n.10 (1995).

The court also rebuffed Ms. Gaffey's argument based on the obviously phony nature of the bonds by saying, "You argued that to the jury. They didn't buy it." That remark seems to indicate that the court believed it could not depart downward based on the obviously phony nature of the bonds because the jury had rejected Zedner's argument that he lacked a criminal state of mind on account of his delusional belief that the bonds were genuine. There is no incompatibility between a jury's finding that the defendant did not delusionally believe phony bonds were genuine and a court's conclusion that the severity of the offense was diminished by the obviously spurious nature of the bonds. *Cf. United States v. Agwu*, 5 F.3d 614, 616 (2d Cir. 1993) (per curiam) (noting that a decision not to depart pursuant to Comment 10 "is not appealable unless the refusal was based on the court's mistaken belief that it did not have the discretion to do so").

The combination of circumstances resulting from the risk that the court misconstrued its authority to depart downward and the upheaval in the federal sentencing laws resulting from the Supreme Court's decision in *United States v. Booker*, ___ U.S. ___, 125 S.Ct. 738 (2005), convinces us that the best course is to remand for resentencing consistent with this opinion and in accordance with the dictates of *Booker*.

CONCLUSION

We have considered Zedner's remaining claims and find them to be without merit. For the foregoing reasons, we AFFIRM the judgment of conviction, but VACATE the sentence and REMAND for resentencing.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
THURGOOD MARSHALL U.S. COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

Roseann B. MacKechnie
CLERK

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 24 day of May two thousand five.

United States of America,

Appellee,

v. Docket # 04-0821

Jacob Zedner,

Defendant-Appellant.

A petition for panel rehearing and a petition for rehearing en banc having been filed herein by the appellant Jacob Zedner. Upon consideration by the panel that decided the appeal, it is Ordered that said petition for rehearing is **DENIED**.

It is further noted that the petition for rehearing en banc has been transmitted to the judges for the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

For the Court,

Roseann B. MacKechnie, Clerk

By: /s/ Tracy W. Young
Motion Staff Attorney